

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

KAMAL ELSAYED AHMED HAMOUDA,,

Respondent.

Case No. 5500

OAH No. 2015100285

DECISION

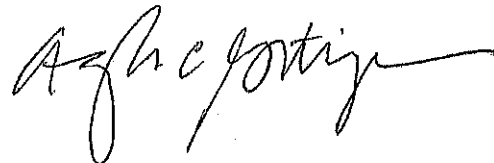
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to page three, paragraph #4:

“The First Amended Statement of Issues filed on January 6, 2016 is the operative pleading in this matter.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on April 20, 2016.

IT IS SO ORDERED this 21th day of March, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

KAMAL ELSAYED AHMED HAMOUDA,

Respondent.

Case No. 5500

OAH No. 2015100285

PROPOSED DECISION

Irina Tentser, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 22, 2015, at Los Angeles, California.

William D. Gardner, Deputy Attorney General, represented Executive Officer Virginia Herold (Complainant) of the Board of Pharmacy (Board).

Ronald S. Marks, Attorney, appeared and represented Kamal Elsayed Ahmed Hamouda (Respondent).

The Board denied Respondent's application for registration as an Intern Pharmacist based on allegations that Respondent was convicted of substantially related crimes, engaged in an act involving moral turpitude/dishonesty, engaged in the dangerous use of a controlled substance, made false representations of facts, violated state laws regulating controlled substances, and violated Pharmacy Law. Respondent presented evidence that he was entitled to registration as an Intern Pharmacist.

Prior to the conclusion of the hearing, Complainant made a motion to strike the first cause for denial of application (conviction of substantially related crimes) from the Statement of Issues. The motion was unopposed by Respondent. Respondent argued that the Statement of Issues should be dismissed in its entirety based on the allegation that court did not have jurisdiction to hear the matter. The motion to strike the first cause of action and amend the pleading was granted by the administrative law judge¹ and the record was left open for

¹ Complainant's January 6, 2016 correspondence to OAH and Respondent's counsel incorrectly indicates that the administrative law judge did not rule on Complainant's motion to strike and instead requested Complainant file an amended Statement of Issues reflecting the proposed change. (Exhibit 8.) To clarify the record, the administrative law

Complainant to file a First Amended Statement of Issues no later than December 29, 2015. Complainant's First Amended Statement of Issues was filed on January 6, 2016, and was marked and admitted into evidence as Exhibit 7.

In addition, the record was left open for Respondent to file a brief on his jurisdictional argument by December 30, 2015; for Complainant to file its opposition no later than January 6, 2016; and for Respondent to file his reply to Complainant's opposition no later than January 13, 2016.

Respondent's "Memorandum of Points and Authorities In Support of Objection to Statement of Issues" was filed on December 30, 2015, and was marked as Exhibit K. Complainant's "Opposition to Respondent's Objection to Statement of Issues" was filed on January 6, 2016, and was marked as Exhibit 8. Respondent's "Memorandum of Points and Authorities In Reply to Opposition to Objection to Statement of Issues" was filed on January 7, 2016, and was marked as Exhibit L.

The record was closed and the matter submitted on January 13, 2016.

FACTUAL FINDINGS

Respondent's Objection to Statement of Issues Overruled and Motion to Strike Statement of Issues Denied

A. Statement of Issues Was Properly Filed

1. Respondent's argument that Complainant improperly filed the Statement of Issues in this matter is misguided. Under Business and Professions Code² section 485, upon denial of application for a license, the Board may proceed by either immediately filing a Statement of Issues under section 485, subdivision (a), or by notifying the applicant that the application is denied and that the applicant has the right to a hearing under Chapter 5 (commencing with section 11500 of Part 1 of Division 3 of Title 2 of the Government Code) if, as in this case, Respondent requests a hearing within 60 days of the notice of denial, under section 485, subdivision (b). A Statement of Issues is the necessary and proper result if a hearing is requested by the applicant, whichever course the Board chooses

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judge *did* grant the motion to strike *and* requested that an amended Statement of Issues be filed and served reflecting the amendment to the Statement of Issues.

² All further statutory references are to the Business and Professions Code unless otherwise indicated.

B. Statement of Issues' Causes for Denial Are Proper

2. Respondent's argument is unpersuasive that the causes for denial in the Statement of Issues are precluded because they are outside the scope of the basis for denial contained in the Board's March 27, 2015 notice of denial letter. There is no limitation that may be alleged in the Statement of Issues under section 11504 of the Government Code, a provision within the Administrative Procedure Act (APA). Specifically, section 11504 unequivocally states that the Statement of Issues shall specify "any" matters that have come to the Board's attention that would warrant denial.

C. Respondent Waived His Untimely Hearing Claim

3. Section 487 requires that the Board conduct a hearing "within 90 days from the date the hearing is requested." Respondent requested a hearing on May 22, 2015. Inexplicably, the hearing was scheduled for December 21, 2015, more than 90 days after Respondent's request. However, Respondent waived his timeliness argument by failing to object to the untimeliness of the hearing at any point prior to the hearing. In fact, Respondent requested a continuance of the originally scheduled December 21, 2015 hearing date on October 15, 2015, well after the 90 day period had expired. Respondent's request was granted by OAH and the hearing was continued to December 22, 2015.

Jurisdiction

4. Virginia Herold made the Statement of Issues in her official capacity as the Executive Officer of the Board, an agency within the Department of Consumer Affairs. The First Amended Statement of Issues filed on December 29, 2015 is the operative pleading in this matter.

5. On September 8, 2014, Respondent filed an application for registration as an Intern Pharmacist with the Board. On August 19, 2014, Respondent certified under penalty of perjury the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 27, 2015. Respondent requested a hearing on May 22, 2015, and this hearing ensued.

The December 5, 2008 Arrest

6. On December 5, 2008, at approximately 3:35 a.m., a Los Angeles Police Department officer observed Respondent's vehicle weaving in the lane and straddling the lines on either side of the vehicle. Based on the officer's observation, Respondent was stopped for suspected violation of Vehicle Code sections 21658, subdivision (a) (unsafe lane movement). As Respondent pulled his vehicle to the curb, he collided with the curb, pulled away from the curb and then pulled back into the curb, again colliding with the curb.

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7. After Respondent finally stopped his vehicle, the officer, when he approached the driver's side window, immediately noticed Respondent's slurred speech, droopy eyelids, and very relaxed face. Respondent told the officer that he had come from Seven Vail's on Sunset Boulevard and that he had not had anything to drink. Respondent exited the vehicle upon instruction from the officer. The officer observed that Respondent's gait was unsteady and labored.

8. The officer administered Respondent a Preliminary Alcohol Screening test (PAS). Respondent's PAS test resulted in a Blood Alcohol Content (BAC) level of 0.0 percent. The officer then administered Respondent a Standardized Field Sobriety Test (SFST), which Respondent was unable to perform. As a result, the officer opined that Respondent was under the influence of an intoxicant, unable to operate a motor vehicle safely and arrested Respondent for suspected violation of Vehicle Code sections 23152, subdivision (a) (driving under the influence).

9. At the police station, the officer conducted a Drug Recognition Experts (DRE) evaluation of Respondent. Based on the officer's DRE Evaluation, the officer opined that Respondent was under the influence of a Central Nervous System (CNS) Depressant and was unable to operate a motor vehicle safely.

10. At the time of his arrest, 127 pills of Xanax were recovered from Respondent's left jacket pocket. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and is a dangerous drug pursuant to section 4022. It is unlawful to possess alprazolam (Xanax) without a prescription under Health and Safety Code section 11375.

11. At the time of his arrest, Respondent admitted to officers that he stole the 127 pills of Xanax from his father, a registered pharmacist.

12. Respondent's December 5, 2008 arrest ultimately led to his January 21, 2009 conviction for driving under the influence (DUI). His January 21, 2009, conviction was dismissed and, on July 10, 2015, his record was expunged pursuant to Penal Code section 1203.4.

Respondent's False Representations to the Board Regarding the Circumstances of His 2009 DUI Conviction

13. Respondent disclosed his January 21, 2009 DUI conviction on his Board Application. On November 9, 2014, Respondent submitted a letter to the Board for the purpose of explaining his January 21, 2009 conviction and his December 8, 2010 driving without a valid driver's license conviction circumstances.³ In his letter, Respondent

³ Respondent also has a December 8, 2010 conviction for driving without a valid driver's license; however, it is not addressed in this decision because it is not relevant

included false representations regarding the circumstances of his DUI by writing that he took “. . . half a tablet of Xanax offered by my friend . . .” (Exhibit 3.)

Mitigation, Credibility and Reliability

14. Respondent attributed his admission to the police that he had stolen the Xanax pills from his father, a registered pharmacist, to his nerves and panic at the officers’ interrogation at the time of his arrest. However, at hearing, he testified that he stole the pills from his father’s home, rather than his father’s pharmacy, as alleged in the First Amended Statement of Issues. The fact that Respondent admitted to stealing the pills from his father, a registered pharmacist, is the relevant fact, not whether the pills were stolen from his father’s home or pharmacy.

15. Respondent stated at hearing that at the time of his December 5, 2008 arrest, he had a prescription for five tablets of Xanax. No corroborating evidence was presented to support Respondent’s testimony that he had a prescription for Xanax. Notwithstanding this, the testimony regarding Respondent’s five tablets Xanax prescription is irrelevant based on Respondent’s admission that he did not have a prescription for the Xanax he took on December 5 or for the 127 Xanax pills that were recovered from him at the time of his arrest.

16. Respondent disputed the amount of Xanax pills recovered at the time of his arrest, testifying that the amount of Xanax pills was less than half of the 127 pills counted by the police because the tablets recovered consisted of tablets that had been broken into pieces. Respondent’s testimony regarding the amount of Xanax pills is uncorroborated and unpersuasive in light of the police records’ description of the amount of pills recovered from Respondent.

17. At hearing, Respondent blamed his November 9, 2014 letter’s inaccuracies, as described in factual finding 13, on his faulty memory and on his lack of access to the police report at the time he wrote the letter; therefore, Respondent could not recall the exact details of the night of his arrest. Respondent’s testimony denying that he knowingly wrote a false description of the circumstances of his December 5, 2008 arrest is unreliable in light of the fact that Respondent testified that he knew his friend had not given him the Xanax and that he had taken enough Xanax that night to significantly impair his driving ability, as evidenced by his DUI conviction.

18. Respondent’s unwillingness to be forthcoming in his November 9, 2014 letter to the Board and at hearing is troubling because it evidences a present and potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

to the causes for denial of Respondent’s intern pharmacist registration application as alleged in the First Amended Statement of Issues.

Intern Pharmacist Position and Duties

19. At hearing, Board investigator, William Craig Jeffers, described intern pharmacist duties as including anything that a registered pharmacist can do under supervision of a pharmacist. Intern pharmacist duties include, but are not limited to, taking prescriptions over the phone, filling prescriptions, and labeling vials. In addition, an intern pharmacist has access to the inventory of pharmacy and deals daily with patients that are sick, and who are taking medication that have multiple uses and side effects. Accordingly, intern pharmacists have sensitive duties and work in a highly regulated industry that deals with dangerous drugs and devices. Based on the position of trust that an intern pharmacist occupies, it is therefore important that a registered intern pharmacist is truthful and honest and follows the laws of the State of California.

20. Respondent's possession and use of the dangerous drug Xanax without a prescription, coupled by his knowingly false description of the circumstances of his arrest in his November 14, 2014 letter to the Board, are actions that are substantially related to the qualification, functions and duties of an Intern Pharmacist registrant licensee.

Respondent's Background, Mitigation, and Rehabilitation

21. Respondent is enrolled in California Northstate University College of Pharmacy's Doctor of Pharmacy program. Respondent is a member of the Student Advisory Ambassador Council, a club that assists in the interview process of potential pharmacy school students. In order to complete the program and receive his degree, Respondent is required to complete internship hours. Respondent received his intern pharmacist registration from the State of Nevada and can complete his mandatory internship hours in Nevada. However, Respondent would prefer to complete the internship hours in California because completing the hours in Nevada would require him to either commute approximately four to five hours per day from his home in Elk Grove, California to Reno, Nevada or temporarily relocate to Nevada.

22. Respondent submitted two letters of recommendation in his support. Kamal M. Al-Khatib (Al-Khatib), Founder/President of the American Islamic Institute (Mosque) of A.V. (Antelope Valley), has known Respondent since he was a six year old attending the Guidance Charter School next door to the Mosque. Al-Khatib's letter attested to Respondent's commitment to his faith, hardworking nature, involvement in the community, and decent and honest nature. Al-Khatib wrote that Respondent's conviction did not affect his belief in Respondent's ability to be a competent pharmacist. Congressman Steven Knight of California's 25th District (Congressman Knight)'s letter described Respondent's history and accomplishments, including Respondent's participation in his high school Academic Decathlon Club, Asian Pacific Club, and Key Club. Respondent attended California State University of Los Angeles and was awarded a degree in Biological Sciences. Respondent also participated in many organizations, including the Student National Pharmaceutical Organization (SNPhA) and the American Pharmacist Association (APhA). Congressman Knight wrote that Respondent would be a great addition to the Board's team. Congressman

Knight, however, was not aware of Respondent's convictions or the circumstances of the denial of his application at the time he wrote his letter of support.

23. At hearing, Respondent's explanation for why he had stolen a bottle of Xanax from his father was that he was stressed out about his finals and could not sleep. He acknowledged that by taking Xanax and driving while he knew he was sedated, he was a danger to himself and others. However, he minimized the circumstances of his DUI arrest and his lack of veracity in his letter to the Board, and deflected responsibility for his admissions by blaming his youth and police intimidation at the time of his DUI arrest. Respondent, who attends mosque weekly, stressed his unblemished record since his 2010 driving citation. Ultimately, Respondent believed that it was punitive for the Board to deny him his Intern Pharmacist registration based on his past transgressions.

LEGAL CONCLUSIONS

1. Section 4300 authorizes the Board to refuse an applicant's application for registration as an Intern Pharmacist. After refusal of the application, the burden of proof is on the license applicant to show that he or she is qualified to hold the license. To prevail in this matter, Respondent must demonstrate by a preponderance of the evidence that he is entitled to an Intern Pharmacy registration. (Evid. Code, §§ 115, 500.)

2. A preponderance of the evidence establishes that the existence of a factual matter is more likely than not. As one court explained, "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it." (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

3. Section 480; subdivision (a), addresses the Board's authority to deny a license application. It states, in pertinent part:

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

[] . . . []

(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.

4. Section 4301 states, in pertinent part:

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

[¶] . . . [¶]

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

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

[¶] . . . [¶]

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

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provisions or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

5. Section 4060 states, in pertinent part, that “[N]o person shall possess any controlled substance, except that furnished to a person upon . . . prescription. . . .” As described in factual finding 10, Xanax is a Schedule IV controlled substance and a dangerous drug. (Health & Saf. Code § 11057, subd. (d)(1); Bus & Prof. Code, § 4022.)

6. Health and Safety Code section 11375 makes it unlawful to possess alprazolam (Xanax) without a prescription.

7. 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.

8. Cause exists to deny Respondent's application for registration under sections 480, subdivision (a)(3)(A) and 4301, subdivision (f), in that Respondent committed an act involving moral turpitude and/or dishonesty by stealing in excess of 120 Xanax pills from his father. (Factual Findings 10-11, 14 through 16, 18-20, and 23; Legal Conclusions 3, 4, and 7.)

9. Cause exists to deny Respondent's application for registration under sections 480(a)(3)(A) and 4301, subdivision (g), in that Respondent knowingly made false representations of fact in his November 9, 2014 convictions explanation letter. (Factual Findings 10-11, 17-20, and 23; Legal Conclusions 3, 4, and 7.)

10. Cause exists to deny Respondent's application for registration under sections 480 (a)(3)(A) and 4301, subdivision (h), in that Respondent used a controlled substance and dangerous drug, Xanax, to the extent and/or in a manner dangerous to himself and the public. (Factual Findings 6-12, 18-20, and 23; Legal Conclusions 3, 4, and 6-7.)

11. Cause exists to deny Respondent's application under sections 480, subdivision (a)(3)(A), and 4301, subdivision (j), in that Respondent violated state law regulating controlled substances and dangerous drugs by possessing in excess of 120 Xanax pills without a prescription, in violation of Health and Safety Code section 11375. (Factual Findings 6-12, 18-20, and 23; Legal Conclusions 3, 4, and 6-7.)

12. Cause exists to deny Respondent's application under section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (o), in that Respondent violated a provision of the Pharmacy Law (Bus. And Prof. §§ 4000 et seq.) by possessing in excess of 120 Xanax pills without a prescription, in violation of section 4060. (Factual Findings 10-11 and 15-16; Legal Conclusions 3-7.)

13. Section 4313 states:

"In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation.

However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict; public protection shall take precedence.”

14. Applying the Board’s rehabilitation criteria and the factors to be considered in determining penalties to this matter, it is first noted that Respondent not only committed the acts of stealing and using the controlled substance of Xanax, but he did so and then drove a vehicle, thereby placing the public at risk. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(1).) No evidence of subsequent acts by Respondent that violate Pharmacy Law were presented at hearing. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(2).) A period of eight years has elapsed since Respondent’s possession and use of prescription medication without a prescription. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(3).) Respondent’s arrest resulted in a conviction that has now been expunged. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(4).) Finally, Respondent is in the process of furthering his education, is a contributing member of society, and submitted letters of recommendation in his support. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(5).)

15. Rehabilitation requires fully acknowledging the wrongfulness of past actions. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent’s recent November 8, 2014 failure to be forthcoming regarding the circumstances of his 2008 arrest in his letter to the Board and in his hearing testimony clearly show that Respondent has not attained the necessary rehabilitation. In fact, Respondent did not express sincere remorse for his actions at trial, evidenced by his failure to be truthful at hearing about the circumstances leading to his arrest. Further, Respondent minimized the falsehood contained in his letter of explanation to the Board. The fact that Respondent stole and used a controlled substance without a prescription and then drove unsafely under the influence, coupled with his unwillingness to be forthcoming to the Board regarding his actions, show that his rehabilitation is incomplete. Accordingly, despite the fact that Respondent has satisfied some of the criteria of rehabilitation, as described in legal conclusion 14, the facts demonstrate that permitting Respondent an Intern Pharmacist at this time would result in potential harm to the public and to consumers.⁴ (Legal Conclusion 13.)

ORDER

The application of Respondent Kamal Elsayed Ahmed Hamouda for a registration to act as an Intern Pharmacist is denied.

DATED: February 5, 2016

DocuSigned by:
Irina Tentser
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Irina Tentser
Administrative Law Judge
Office of Administrative Hearings

⁴ California State Board of Pharmacy Disciplinary Guidelines (Rev. 10/2007) at pg. 3.

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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:
12 **KAMAL ELSAYED AHMED HAMOUDA**
13
14 **Intern Pharmacist Registration Applicant**
15 Respondent.

Case No. 5500

OAH No. 2015100285

**FIRST AMENDED STATEMENT OF
ISSUES**

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 September 8, 2014, the Board of Pharmacy ("Board") received an
21 application for an Intern Pharmacist Registration from Kamal Elsayed Ahmed Hamouda
22 ("Respondent"). On or about August 19, 2014, Kamal Elsayed Ahmed Hamouda certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on March 27, 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.

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STATUTORY AND REGULATORY PROVISIONS

4. Section 4313 of the Code states

"In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence."

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

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

....

"(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.

....

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

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

....

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

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

....

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

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

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10 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of or conspiring to violate any provision or term of this chapter or of the applicable
12 federal and state laws and regulations governing pharmacy, including regulations established by the
13 board or by any other state or federal regulatory agency."

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15 7. Section 4060 of the Code states, in pertinent part:

16 "No person shall possess any controlled substance, except that furnished to a person upon
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
23 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer."

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1 8. Health and Safety Code Section 11375 makes it unlawful to possess alprazolam (i.e.,
2 "Xanax") without a prescription.

3 CONTROLLED SUBSTANCE

4 9. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
5 to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to
6 Code section 4022.

7 FACTUAL BACKGROUND

8 10. On December 5, 2008 at approximately 3:35 a.m., a Los Angeles Police Department
9 officer observed Respondent operating his vehicle in an unsafe manner by weaving between traffic
10 lanes and colliding with the curb several times. After pulling Respondent over, the officer noticed
11 that Respondent had slurred speech, droopy eyelids, and a very relaxed face. Respondent's BAC
12 registered 0.0%, leading the officer to conclude that Respondent was under the influence of a
13 central nervous system ("CNS") depressant. The arresting officer found 127 Xanax pills in
14 Respondent's left jacket pocket. At the time of his arrest, Respondent admitted to the officer that
15 he had stolen the Xanax pills from his father who is a registered pharmacist.

16 11. On or about December 8, 2010, after pleading guilty, Respondent was convicted of
17 one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without
18 a license] in the criminal proceeding entitled *The People of the State of California v. Kamal*
19 *Elsayedahmed Hamouda* (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court
20 placed Respondent on 12 months probation and ordered him to pay fines. The facts and
21 circumstances underlying this conviction are that Respondent's driver's license had been restricted
22 for one (1) year following a now-expunged DUI conviction. On September 24, 2010, Respondent
23 commenced to drive a vehicle without having taken the steps necessary to have his drivers' license
24 reinstated. On September 24, 2010, Respondent was on was stopped at a sobriety checkpoint at
25 which time a police officer discovered that Respondent did not have a valid driver's license.

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FIRST CAUSE FOR DENIAL OF APPLICATION

(Act Involving Moral Turpitude/Dishonesty)

12. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (f), in that Respondent committed an act involving moral turpitude and/or dishonesty. The circumstances are that Respondent stole in excess of 120 Xanax pills from his father's pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DENIAL OF APPLICATION

(False Representation of Facts)

13. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (g), in that Respondent knowingly made false representations of fact in a written document. The circumstances are that in a letter he submitted to the Board for the purpose of explaining the circumstances of a now-expunged DUI conviction Respondent falsely stated that on the night of his arrest he had taken only one half of a Xanax pill and that the pill had been provided to him by his friend. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Controlled Substance)

14. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (h), in that Respondent used a controlled substance and dangerous drug to the extent and/or in a manner dangerous to himself and the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

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1 FOURTH CAUSE FOR DENIAL OF APPLICATION

2 (Violation of State Law Regulating Controlled Substances)

3 15. Respondent's application is subject to denial under Code section 480, subdivision
4 (a)(3)(A), in conjunction with section 4301, subdivision (j), in that Respondent violated state law
5 regulating controlled substances and dangerous drugs. The circumstances are that Respondent
6 possessed in excess of 120 Xanax pills without a prescription, in violation of Health and Safety
7 Code section 11375. Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraph 10, inclusive, as though set forth fully herein.

9 FIFTH CAUSE FOR DENIAL OF APPLICATION

10 (Violation of the Pharmacy Law)


11 16. Respondent's application is subject to denial under Code section 480, subdivision
12 (a)(3)(A), in conjunction with section 4301, subdivision (o), in that Respondent violated a
13 provision of the Pharmacy Law (Bus. and Prof. §§ 4000 et seq.). The circumstances are that
14 Respondent possessed in excess of 120 Xanax pills without a prescription, in violation of Business
15 and Professions Code section 4060. Complainant refers to, and by this reference incorporates, the
16 allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

17 PRAYER

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

- 20 1. Denying the application of Kamal Elsayed Ahmed Hamouda for an Intern Pharmacist
21 Registration; and
22 2. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 4/6/16


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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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. 5500

12 **KAMAL ELSAYED AHMED HAMOUDA**

STATEMENT OF ISSUES

13 **Intern Pharmacist Registration Applicant**

14 Respondent.
15

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 September 8, 2014, the Board of Pharmacy ("Board") received an
21 application for an Intern Pharmacist Registration from Kamal Elsayed Ahmed Hamouda
22 ("Respondent"). On or about August 19, 2014, Kamal Elsayed Ahmed Hamouda certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on March 27, 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.

1 **STATUTORY AND REGULATORY PROVISIONS**

2 4. Section 4313 of the Code states

3 "In determining whether to grant an application for licensure or whether to discipline or
4 reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public
5 protection shall take priority over rehabilitation and, where evidence of rehabilitation and public
6 protection are in conflict, public protection shall take precedence."

7 5. Section 480 of the Code states, in pertinent part:

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

10 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
11 plea or verdict of guilty or a conviction following a plea of nolo contendere.

12

13 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
14 would be 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
16 is substantially related to the qualifications, functions, or duties of the business or profession for
17 which application is made.

18

19 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license
20 solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or
21 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to
22 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

23

24 6. Section 4301 of the Code states, in pertinent part:

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

28

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

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

6

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

12

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

15

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

28

1 system ("CNS") depressant. The arresting officer found 127 Xanax pills in Respondent's left
2 jacket pocket. At the time of his arrest, Respondent admitted to the officer that he had stolen the
3 Xanax pills from his father who is a registered pharmacist.

4 (c) On or about December 8, 2010, after pleading guilty, Respondent was convicted of
5 one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without
6 a license] in the criminal proceeding entitled *The People of the State of California v. Kamal*
7 *Elsayedahmed Hamouda* (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court
8 placed Respondent on 12 months probation and ordered him to pay fines.

9 (d) The facts and circumstances underlying the conviction are that Respondent's driver's
10 license was restricted for one year from the date his driving under the influence incident i.e., from
11 December 5, 2008 to December 5, 2009. After December 5, 2009 Respondent was eligible to
12 reinstate his driver's license, but he failed to do so. Nevertheless, Respondent commenced driving
13 and on September 24, 2010, Respondent was stopped at a sobriety checkpoint at which time a
14 police officer discovered that Respondent did not have a valid driver's license.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Act Involving Moral Turpitude/Dishonesty)**

17 12. Respondent's application is subject to denial under Code section 480, subdivision
18 (a)(3)(A), in conjunction with section 4301, subdivision (f), in that Respondent committed an act
19 involving moral turpitude and/or dishonesty. The circumstances are that Respondent stole in
20 excess of 120 Xanax pills from his father's pharmacy. Complainant refers to, and by this reference
21 incorporates, the allegations set forth above in paragraph 11, subparagraph b, inclusive, as though
22 set forth fully herein.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(False Representation of Facts)**

25 13. Respondent's application is subject to denial under Code section 480, subdivision
26 (a)(3)(A), in conjunction with section 4301, subdivision (g), in that Respondent knowingly made
27 false representations of fact in a written document. The circumstances are that in a letter he
28 submitted to the Board for the purpose of explaining the circumstances of his DUI conviction

1 Respondent falsely stated that on the night of his arrest he had taken only one half of a Xanax pill
2 and that the pill had been provided to him by his friend. Complainant refers to, and by this
3 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs a and b,
4 inclusive, as though set forth fully herein.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Dangerous Use of Controlled Substance)**

7 14. Respondent's application is subject to denial under Code section 480, subdivision
8 (a)(3)(A), in conjunction with section 4301, subdivision (h), in that Respondent used a controlled
9 substance and dangerous drug to the extent and/or in a manner dangerous to himself and the
10 public. Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraph 11, subparagraphs a and b, inclusive, as though set forth fully herein.

12 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

13 **(Violation of State Law Regulating Controlled Substances)**

14 15. Respondent's application is subject to denial under Code section 480, subdivision
15 (a)(3)(A), in conjunction with section 4301, subdivision (j), in that Respondent violated state law
16 regulating controlled substances and dangerous drugs. The circumstances are that Respondent
17 possessed in excess of 120 Xanax pills without a prescription, in violation of Health and Safety
18 Code section 11375. Complainant refers to, and by this reference incorporates, the allegations set
19 forth above in paragraph 11, subparagraph b, inclusive, as though set forth fully herein.

20 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Violation of the Pharmacy Law)**

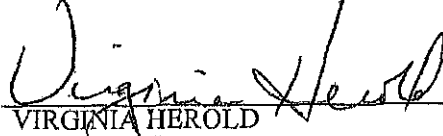
22 16. Respondent's application is subject to denial under Code section 480, subdivision
23 (a)(3)(A), in conjunction with section 4301, subdivision (o), in that Respondent violated a
24 provision of the Pharmacy Law (Bus. and Prof. §§ 4000 et seq.). The circumstances are that
25 Respondent possessed in excess of 120 Xanax pills without a prescription, in violation of Business
26 and Professions Code section 4060. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraph 11, subparagraph b, inclusive, as though set forth fully
28 herein.

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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 Kamal Elsayed Ahmed Hamouda for a Intern Pharmacist Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/27/15 

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

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