

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 STEPHANIE J. LEE
Deputy Attorney General
4 State Bar No. 279733
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6185
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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

Case No. 6639

14 **LAWRENCE JARDIN NUNES**
15 **Pharmacist License Applicant**

STATEMENT OF ISSUES

16 Respondent.
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18 **PARTIES**

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

22 2. On or about August 31, 2018, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a/an Pharmacist License from Lawrence Jardin Nunes
24 (Respondent). On or about August 27, 2018, Respondent certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on November 26, 2018.

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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 **STATUTORY PROVISIONS**

6 4. Section 123 of the Code states, in pertinent part:

7 It is a misdemeanor for any person to engage in any conduct which subverts or
8 attempts to subvert any licensing examination or the administration of an examination,
9 including, but not limited to:

10 (a) Conduct which violates the security of the examination materials; removing
11 from the examination room any examination materials without authorization; the
12 unauthorized reproduction by any means of any portion of the actual licensing examination;
13 aiding by any means the unauthorized reproduction of any portion of the actual licensing
14 examination; paying or using professional or paid examination-takers for the purpose of
15 reconstructing any portion of the licensing examination; obtaining examination questions or
16 other examination material, except by specific authorization either before, during, or after
17 an examination; or using or purporting to use any examination questions or materials which
18 were improperly removed or taken from any examination for the purpose of instructing or
19 preparing any applicant for examination; or selling, distributing, buying, receiving, or
20 having unauthorized possession of any portion of a future, current, or previously
21 administered licensing examination.

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

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

25 . . .

26 (2) Done any act involving dishonesty, fraud, or deceit with the
27 intent to substantially benefit himself or herself or another, or substantially
28 injure another.

(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.

1 6. Section 496 of the Code states: “A board may deny, suspend, revoke, or otherwise
2 restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to
3 the subversion of licensing examinations.”

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

5 The board shall take action against any holder of a license who is guilty of
6 unprofessional conduct or whose license has been issued by mistake. Unprofessional
7 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,
9 deceit, or corruption, whether the act is committed in the course of relations as a
10 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

11 **REGULATORY PROVISIONS**

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

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

20 9. California Code of Regulations, title 16, section 1723.1, states:

21 Examination questions are confidential. Any applicant for any license
22 issued by the board who removes all or part of any qualifying examination from the
23 examination room or area, or who conveys or exposes all or part of any qualifying
24 examination to any other person may be disqualified as a candidate for a license. The
25 applicant shall not be approved to take the examination for three years from the date
26 of the incident and shall surrender his or her intern license until again eligible to take
27 the examination. The applicant may not be issued a pharmacy technician license until
28 the applicant is again eligible to take the examination.

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1 **STATEMENT OF FACTS**

2 10. The North American Pharmacist Licensure Examination (NAPLEX) is used by the
3 Board as part of its assessment of entry-level pharmacist candidates who apply for licensure. The
4 NAPLEX is created and administered by the National Association of Boards of Pharmacy
5 (NABP), an independent association that assists member boards of pharmacy in the United States.

6 11. On or about July 3, 2014, Respondent registered to take the NAPLEX and was
7 scheduled to sit for the exam on September 1, 2015.

8 12. On or about July 1, 2015, Respondent purchased or acquired materials advertised by
9 an online seller as real NAPLEX questions from previously administered exams.

10 13. NABP reviewed these exam questions and determined that at least 108 of the 230
11 questions were substantially similar to actual NAPLEX questions administered in previous
12 exams. The substantial similarity of these questions meant that the actual NAPLEX questions
13 were compromised and are no longer administered to candidates who take the NAPLEX. The
14 remaining 122 questions in the purchased materials were deemed to be similar to actual NAPLEX
15 questions administered in previous exams.

16 14. On or about July 2, 2015, Respondent re-sold the materials containing substantially
17 similar and similar NAPLEX questions to another online buyer.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

20 15. Respondent's application is subject to denial under Code section 480(a)(2), in that
21 Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially
22 benefit himself or another, or substantially injure another. Complainant refers to and by this
23 reference incorporates the allegations set forth above in paragraphs 10 through 14, as though set
24 forth fully herein.

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