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

11 In the Matter of the Statement of Issues Against: Case No. 6833
12 **DAVID WAYNE DAWSON** **SECOND AMENDED STATEMENT OF**
13 **Pharmacy Technician Registration Applicant** **ISSUES**
14 Respondent.

15
16
17 **PARTIES**

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

21 2. On or about May 20, 2019, the Board received an application for a Pharmacy
22 Technician Registration from David Wayne Dawson (Respondent). On or about May 7, 2019,
23 David Wayne Dawson certified under penalty of perjury to the truthfulness of all statements,
24 answers, and representations in the application. The Board denied the application on September
25 4, 2019.

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1 **JURISDICTION**

2 3. This Second 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 (Code) unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 ...

8 (c) The board may refuse a license to any applicant guilty of unprofessional
9 conduct. . .

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

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

13 ...

14 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
15 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.

16 ...

17 (h) The administering to oneself, of any controlled substance, or the use of
18 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,
19 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
20 the license.

21 ...

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

23 **STATUTORY PROVISIONS**

24 25 6. Section 480 of the Code states, in pertinent part:

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

1 (1) The applicant has been convicted of a crime within the preceding seven years
2 from the date of application that is substantially related to the qualifications,
3 functions, or duties of the business or profession for which the application is made,
4 regardless of whether the applicant was incarcerated for that crime, or the applicant
5 has been convicted of a crime that is substantially related to the qualifications,
6 functions, or duties of the business or profession for which the application is made
7 and for which the applicant is presently incarcerated or for which the applicant was
8 released from incarceration within the preceding seven years from the date of
9 application

10

11 (c) Notwithstanding any other provision of this code, a person shall not be denied a
12 license on the basis of any conviction, or on the basis of the acts underlying the
13 conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41,
14 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement.
15 An applicant who has a conviction that has been dismissed pursuant to Section
16 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the
17 dismissal if it is not reflected on the report furnished by the Department of Justice.

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

21 . . .

22 (j) This section shall become operative on July 1, 2020.

23 **REGULATORY PROVISIONS**

24 7. California Code of Regulations, title 16, section 1770, states:

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

29 **CONTROLLED SUBSTANCE AND DANGEROUS DRUGS**

30 8. Methamphetamine is a Schedule II controlled substance as designated by Health and
31 Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to Code section
32 4022.

33 9. Carisoprodol, with the brand name of Soma, is a dangerous drug according to
34 Business and Professions Code section 4022. Its indicated use is as an adjunct to rest, physical
35 therapy and other measures for acute painful musculoskeletal conditions.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(January 31, 2020 Criminal Conviction – Wet Reckless on August 20, 2019)**

3 10. Respondent's application is subject to denial under Code section 480(a)(1), in
4 conjunction with California Code of Regulations, title 16, section 1770, in that on or about
5 January 31, 2020, in a criminal proceeding entitled *The People of the State of California vs.*
6 *David Wayne Dawson*, in Kern County Superior Court, case number BM942157A, Respondent
7 was convicted of violating Vehicle Code section 23103 pursuant to Vehicle Code section
8 23103.5(A) (wet reckless in lieu of driving under the influence), a misdemeanor. Respondent was
9 placed on three years' probation, ordered to complete a "wet reckless" alcohol education program
10 and pay restitution, and fined.

11 11. The circumstances underlying the conviction are that on or about August 20, 2019,
12 Respondent was driving under the influence of alcohol and/or drugs, causing a non-injury rear-
13 end collision with another vehicle. Respondent admitted to an officer that he took more of his
14 prescription medicine than was prescribed. An officer found a bottle of white pills in
15 Respondent's vehicle. The bottle was labeled as Carisoprodol 350 mg with a quantity of 30 filled
16 on August 19, 2019, the day before, and written directions to take one pill nightly. The officer
17 counted the pills remaining in the bottle and found there were only twenty-three full pills and one
18 half pill remaining. An ambulance took Respondent to a local hospital, where he received
19 extensive medical aid for an apparent drug overdose.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(Unprofessional Conduct)**

22 12. Respondent's application is subject to denial under Code section 4300, subdivision
23 (c), on the grounds of unprofessional conduct, as defined in section 4301, subdivisions (f), (h),
24 and (j), as follows:

25 a. On or about June 11, 2015, Respondent entered a local Walmart store, concealed
26 antacid pills in his pants, and exited the store without attempting to purchase the items. An asset
27 protection associate attempted to contact Respondent, but he refused to cooperate. The
28 merchandise valued at \$7.88 was not recovered.

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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 David Wayne Dawson for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: July 6, 2020



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

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