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

12 In the Matter of the Statement of Issues Against:
13 SHALAYA FINLEY
5272 Auburn Drive
14 San Diego, CA 92105

Case No. **DBC 2008-109**

STATEMENT OF ISSUES

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

- 19 1. Cathleen J. Poncabare (Complainant) brings this Statement of Issues
20 solely in her official capacity as the Executive Officer of the Dental Board of California,
21 Department of Consumer Affairs.
22 2. On or about June 4, 2008, the Dental Board of California, (Board)
23 received an application from Shalaya Finley for licensure as a Registered Dental Assistant. On
24 or about May 30, 2008, Shalaya Finley (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 October 29, 2008.

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JURISDICTION AND STATUTORY VIOLATIONS

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

4. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of :

...

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

....

5. Section 480 of the Code states:

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

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

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

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6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480;

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Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person 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 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, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. . . .

8. Section 1628.5 of the Code states, in pertinent part:

The board may deny an application . . . , or, at any time prior to licensure, the board may deny the issuance of a license to an applicant for licensure as a dentist or dental auxiliary, if the applicant has done any of the following:

(a) Committed any act which would be grounds for the suspension or revocation of a license issued pursuant to this code.

(b) Committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

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9. California Code of Regulations, title 16, section 1019 states:

For the purposes of denial, suspension or revocation of a license of a dentist or a dental auxiliary pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a dentist or dental auxiliary if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to, those involving the following:

(a) Any violation of Article 6, Chapter 1, Division 2 of the Code except Sections 651.4, 654 or 655.

(b) Any violation of the provisions of Chapter 4, Division 2 of the Code.

10. California Code of Regulations, title 16, section 1020 states:

(a) When considering the denial of a license under Section 480 of the Code, the board in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

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(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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FIRST CAUSE FOR DENIAL OF APPLICATION

(November 3, 2003, Criminal Conviction - Burglary and Possession of Forged Documents)

11. Respondent's application is subject to denial under section 480(a)(1)(2) and (3), and 1628.5(a) and (b), in that respondent has sustained criminal convictions for crimes that are substantially related to the qualifications, functions, or duties of a registered dental assistant. On November 3, 2003, in a criminal proceeding entitled *People of the State of California v. Shalaya Velarde*, Superior Court of the State of California, County of San Diego, Case Number CD171084, respondent pleaded guilty to two counts of violating Penal Code section 459, burglary, and one count of violating Penal Code section 475(c), possession of a completed check, money order, traveler's check, warrant or county order, with the intent to utter and pass and facilitate the utterance and passage of the same, in order to defraud a person, as felonies. She was sentenced to custody for 187 days.

SECOND CAUSE FOR DENIAL OF APPLICATION

(January 26, 2006, Criminal Conviction - Possession of a Forged Prescription and Submission of False Insurance Claim for Health Benefits)

12. Respondent's application is subject to denial under section 480(a)(1)(2) and (3), and 1628.5(a) and (b), in that respondent has sustained criminal convictions for crimes that are substantially related to the qualifications, functions, or duties of a registered dental assistant. On or about January 26, 2006, in a criminal proceeding entitled *People of the State of*

1 *California v. Shalaya Finley*, Superior Court of California, County of San Diego, Case No. CD
2 194957, Respondent pleaded guilty to obtaining a forged prescription for Vicodin in violation of
3 Health and Safety Code section 11173(a), and for submitting a fraudulent claim for health care
4 benefits, in violation of Penal Code section 550(a)(6). On February 27, 2006, respondent was
5 sentenced to three years of formal probation, commitment to the sheriff for 365 days, and
6 payment of fines.

7 PRAYER

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

- 10 1. Denying the application of Shalaya Finley for a license as a registered
11 dental assistant;
12 2. Taking such other and further action as deemed necessary and proper.

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14 DATED: May 4, 2009



15 CATHLEEN J. PONCABARE
16 Executive Officer
17 Dental Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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