

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

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

Case No. 4834

13 **ALFONSO GUILLERMO GARCIA**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 9, 2012, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Alfonso Guillermo Garcia
24 (Respondent). On or about March 23, 2012, Alfonso Guillermo Garcia certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on April 11, 2013.

27 ///

28 ///

1 Prior License History

2 3. On or about October 18, 2007, the Board of Pharmacy issued Pharmacy Technician
3 Registration Number 70093 to Alfonso Guillermo Garcia (Respondent). The Pharmacy
4 Technician Registration expired on September 30, 2011, and was cancelled on January 1, 2012.

5 **JURISDICTION**

6 4. This Statement of Issues is brought before the Board of Pharmacy (Board),
7 Department of Consumer Affairs, under the authority of the following laws. All section
8 references are to the Business and Professions Code (Code) unless otherwise indicated.

9 5. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the Board
10 may refuse a license to any applicant guilty of unprofessional conduct.

11 **STATUTORY PROVISIONS**

12 6. Section 475 of the Code states:

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

15 (1) Knowingly making a false statement of material fact, or knowingly
16 omitting to state a material fact, in an application for a license.

17 (2) Conviction of a crime.

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

20 (4) Commission of any act which, if done by a licentiate of the business or
21 profession in question, would be grounds for suspension or revocation of license.

22 (b) Notwithstanding any other provisions of this code, the provisions of this
23 division shall govern the suspension and revocation of licenses on grounds specified
24 in paragraphs (1) and (2) of subdivision (a).

25 (c) A license shall not be denied, suspended, or revoked on the grounds of a
26 lack of good moral character or any similar ground relating to an applicant's
27 character, reputation, personality, or habits.

28 7. 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

1 of conviction has been affirmed on appeal, or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under
the provisions of Section 1203.4 of the Penal Code.

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

5 (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.

6 (B) The board may deny a license pursuant to this subdivision only if the
7 crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

8 (b) Notwithstanding any other provision of this code, no person shall be denied
9 a license solely on the basis that he or she has been convicted of a felony if he or she
10 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
11 convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

12 (c) A board may deny a license regulated by this code on the ground that the
13 applicant knowingly made a false statement of fact required to be revealed in the
application for the license.

14 8. Section 482 of the Code states:

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

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

18 (b) Considering suspension or revocation of a license under Section 490.

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

20 9. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a
22 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
23 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
24 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
25 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
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Section 4301 of the Code states:

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 license.

....

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense 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.

....

///
///
///

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1769 states:

3 (a) When considering the denial of a facility or personal license under Section
4 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
5 of the applicant and his present eligibility for licensing or registration, will consider
6 the following criteria:

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

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
10 consideration as grounds for denial under Section 480 of the Business and Professions
11 Code.

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

14 (4) Whether the applicant has complied with any terms of parole, probation,
15 restitution or any other sanctions lawfully imposed against the applicant.

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

17

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

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

26 **FIRST CAUSE FOR DENIAL OF APPLICATION**

27 **(July 10, 2006 Criminal Convictions for DUI on May 9, 2006)**

28 13. Respondent's application for licensure is subject to denial under section 480,
subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of crimes that are
substantially related to the qualifications, duties, and functions of a registered pharmacy
technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code
for a registered pharmacy technician. The circumstances are as follows:

a. On or about July 10, 2006, in a criminal proceeding entitled *People of the State
of California vs. Alfonso Guillermo Garcia*, in Riverside County Superior Court, case number
SWM050286, Respondent was convicted on his plea of guilty to violating Vehicle Code section

1 23152, subdivision (a), driving under the influence of alcohol and/or drugs, Vehicle Code section
2 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
3 and Vehicle Code section 14601.1, subdivision (a), knowingly driving on a suspended license,
4 misdemeanors.

5 b. As a result of the convictions, on or about July 10, 2006, the court sentenced
6 Respondent to serve one day in the custody of the sheriff, with credit for one day, and granted
7 summary probation for 36 months. Respondent was further ordered to complete a four-month
8 First Offender DUI Program, pay fees and fines, and comply with DUI probation terms.

9 c. The facts that led to the conviction are that on or about May 9, 2006, the
10 California Highway Patrol (CHP) was dispatched to a report of a possible DUI driver in the
11 vicinity of Murrieta Hot Springs. After locating the driver (Respondent), the CHP officer
12 followed and observed Respondent driving in an unsafe manner. After making an enforcement
13 stop, the CHP officer made contact with Respondent. Respondent's eyes were bloodshot and
14 watery, his speech was thick and slurred, and he had the odor of an alcoholic beverage emitting
15 from his breath and person. The officer had Respondent exit his vehicle; his gait was slow and
16 unsteady. Respondent submitted to a series of field sobriety tests which he was unable to

17 complete as explained and demonstrated by the officer. Respondent was arrested for driving
18 under the influence. During booking, he provided three breath samples which were analyzed with
19 a BAC of .13, .08, and .11 percent. A check of Respondent's driver's license revealed that it had
20 been suspended for failing to appear at a hearing on another matter.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(January 3, 2008 Criminal Conviction for DUI on December 30, 2007)**

23 14. Respondent's application for licensure is subject to denial under section 480,
24 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is
25 substantially related to the qualifications, duties, and functions of a registered pharmacy
26 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code
27 for a registered pharmacy technician. The circumstances are as follows:

28 ///

1 a. On or about January 3, 2008, in a criminal proceeding entitled *People of the*
2 *State of California vs. Alfonso Guillermo Garcia*, in San Diego County Superior Court, case
3 number S216281, Respondent was convicted on his plea of guilty to violating Vehicle Code
4 section 23152, subdivision (b), driving with a BAC of .08 percent or more, and Vehicle Code
5 section 14601.2, subdivision (a), knowingly driving on a license suspended for a prior DUI
6 conviction, misdemeanors. Pursuant to the plea agreement, the court dismissed an additional
7 count of violating Vehicle Code section 23152, subdivision (a), driving under the influence of
8 alcohol and/or drugs.

9 b. As a result of the conviction, on or about January 3, 2008, the court sentenced
10 Respondent to the custody of the sheriff for seven days, with credit for seven days. Respondent
11 was granted summary probation for five years and ordered to complete a Multiple Conviction
12 Program and MADD Victim Impact Panel session, pay fees and fines, and comply with DUI
13 probation terms. Respondent was ordered to install an ignition interlock device on his vehicle.

14 c. At a hearing on February 13, 2008, Respondent's probation was revoked.
15 Probation was reinstated and Respondent was sentenced to serve 10 days in the custody of the
16 sheriff based on a violation of the terms of probation for violating Vehicle Code section 14601.2,
17 subdivision (a), knowingly driving on a license suspended for a prior DUI conviction. At a
18 hearing on April 1, 2008, Respondent's probation was formally revoked for failure to complete
19 the Multiple Conviction Program, then reinstated on the same terms. At a hearing on July 24,
20 2008, Respondent's probation was formally revoked for failure to complete the Multiple
21 Conviction Program, then reinstated on the same terms, plus an order was issued that he complete
22 five days of public work service. At a hearing on April 6, 2009, Respondent's probation was
23 formally revoked for failure to complete the Multiple Conviction Program and five days of public
24 work service, then reinstated on the same terms. At a hearing on May 29, 2012, Respondent's
25 probation was formally revoked, then reinstated on the same terms.

26 ///

27 ///

28 ///

1 expired a month earlier. The deputy conducted an enforcement stop. Upon contact with the
2 driver (Respondent), the deputy observed that there was a strong odor of an alcoholic beverage on
3 Respondent's breath, his eyes were red and watery, and his speech was low and deliberate. The
4 deputy had Respondent exit the vehicle; he had an unsteady gait and swayed from side to side.
5 Respondent submitted to field sobriety tests which indicated impairment. Respondent provide
6 two breath samples which were analyzed by the preliminary alcohol screening device with a BAC
7 of .174 and .171 percent, respectively. Respondent was arrested for driving under the influence.

8 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

9 **(Dangerous Use of Alcohol)**

10 16. Respondent's application for licensure is subject to denial under section 480,
11 subdivision (a)(3)(A) of the Code in that on or about May 9, 2006, December 30, 2007, and April
12 17, 2012, as described in paragraphs 13-15, above, he used alcohol in a manner that was
13 dangerous or injurious to himself and to others, which would be a ground for discipline under
14 section 4301, subdivision (h) of the Code for a registered pharmacy technician.

15 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Alcohol-Related Criminal Convictions)**

17 17. Respondent's application for licensure is subject to denial under section 480,
18 subdivision (a)(3)(A) of the Code in that he was convicted of four misdemeanor offenses
19 involving the consumption of alcoholic beverages, as described in paragraphs 13-15, above. Said
20 convictions would be a ground for discipline under section 4301, subdivision (k) of the Code for a
21 registered pharmacy technician.

22 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

23 **(Making a False Statement of Fact Required to be Revealed in the Application)**

24 18. Respondent's application for licensure is subject to denial under section 480,
25 subdivisions (a)(3)(A) and (c) of the Code in that he made a false statement of fact in his
26 application for licensure. Said conduct would be a ground for discipline under section 4301,
27 subdivisions (f) and (g) of the Code for a registered pharmacy technician. The circumstances are
28 as follows:

1 19. Question 7 of the "Pharmacy Technician Application" asks the following:

2 Have you ever been convicted of any crime in any state, the USA and its
3 territories, military court or foreign country?

4 Check the box next to "YES" if you have ever been convicted or plead guilty to
5 any crime. "Conviction" includes a plea of no contest and any conviction that has
6 been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code,
7 including infractions, misdemeanor, and felonies. You do not need to report a
8 conviction for an infraction with a fine of less than \$300 unless the infraction
9 involved alcohol or controlled substances. You must, however, disclose any
10 convictions in which you entered a plea or no contest and any convictions that were
11 subsequently set aside pursuant (*sic*) or deferred pursuant to sections 1000 or 1203.4
12 of the Penal Code.

13 Check the box next to "NO" if you have not been convicted of a crime.

14

15 Failure to disclose a disciplinary action or conviction may result in the license
16 being denied or revoked for falsifying the application. Attach additional sheets if
17 necessary.

18 20. In response to Question 7, Respondent checked the box "YES," and listed DUI
19 convictions in "7-07" and "12-08." Respondent failed to declare the following convictions:

20 a. On or about March 28, 2005, in Riverside County Superior Court, case number
21 SWM028147, Respondent was convicted on his plea of guilty to violating Penal Code section
22 490.5, petty theft of retail merchandise, a misdemeanor.

23 b. On or about July 10, 2006, in Riverside County Superior Court, case number
24 SWM050286, Respondent was convicted on his plea of guilty to violating Vehicle Code section
25 14601.1, subdivision (a), driving on a suspended license, a misdemeanor.

26 c. On or about December 15, 2006, in Riverside County Superior Court, case
27 number SWM052076, Respondent was convicted on his plea of guilty to violating Vehicle Code
28 section 14601.5, subdivision (a), knowingly driving on a license suspended for a prior DUI, a
misdemeanor.

d. On or about July 25, 2007, in Riverside County Superior Court, case number
SWM062606, Respondent was convicted on his plea of guilty to violating Vehicle Code section
14601.5, subdivision (a), knowingly driving on a license suspended for a prior DUI, a
misdemeanor.

1 e. On or about January 3, 2008, in San Diego County Superior Court, case number
2 S216281, Respondent was convicted on his plea of guilty to violating Vehicle Code section
3 14601.1, subdivision (a), driving on a suspended license, a misdemeanor.

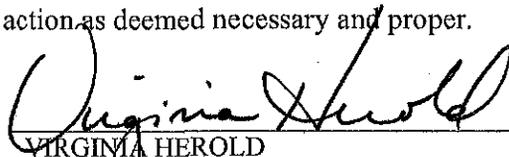
4 **PRAYER**

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

- 7 1. Denying the application of Alfonso Guillermo Garcia for a Pharmacy Technician
8 Registration;
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: _____

10 10/7/13

10 

11 VIRGINIA HEROLD
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

14 SD2013705605