

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

In the Matter of the Statement of Issues
Against:

MICHELLE ORPILLA

Respondent.

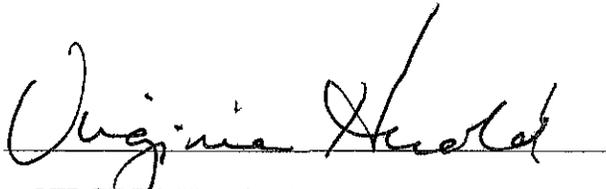
Case No. 4844

**WITHDRAWAL OF
STATEMENT OF ISSUES**

On June 16, 2014, Michelle Orpilla (Respondent) withdrew her appeal and request for a hearing of the denial of her application for registration as a pharmacy technician by the Board of Pharmacy. Accordingly, Statement of Issues No. 4844, filed against Respondent, is withdrawn without prejudice and the denial of her application is affirmed. The earliest date on which Respondent may reapply for a pharmacy technician registration is June 16, 2015, which is one year after the date of her withdrawal and waiver.

DATED: _____

6/17/14



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

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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:
13 **MICHELLE ORPILLA**
14 **Pharmacy Technician Registration**
15 **Applicant**
16 Respondent.

Case No. 4844

STATEMENT OF ISSUES

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 January 23, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Michelle Orpilla
24 (Respondent). Respondent is also known as Michelle Roongruangyot. On or about January 14,
25 2013, Michelle Orpilla certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on May 6,
27 2013.
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1 **JURISDICTION**

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

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

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

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

24 6. Section 480 of the Code states:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this
28 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.

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1 (3)(A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

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

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

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

16 7. Section 482 of the Code states:

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

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

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

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

23 8. Section 492 of the Code states:

24 Notwithstanding any other provision of law, successful completion of any
25 diversion program under the Penal Code, or successful completion of an alcohol and
26 drug problem assessment program under Article 5 (commencing with section
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
28 agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program
operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

9. 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

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
4 to fix the degree of discipline or to determine if the conviction is substantially related
5 to the qualifications, functions, and duties of the licensee in question.

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

8 10. Section 4301 of the Code states:

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

13

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

19

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

22

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of a
25 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 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 12. California Code of Regulations, title 16, section 1770 states:

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

25 **DRUG**

26 13. Methamphetamine is a Schedule II controlled substance as designated by Health
27 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
28 and Professions Code section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Under the Influence of a Controlled Substance on September 9, 2004)

29 14. Respondent's application for licensure is subject to denial under section 480,
30 subdivision (a)(3)(A) of the Code in that she was under the influence of methamphetamine on
31 September 9, 2004. Said conduct would be a ground for discipline under section 4301,
32 subdivision (h) of the Code for a registered pharmacy technician. The circumstances are as
33 follows:

1 a. On or about September 9, 2004, a patrol officer with the Upland Police
2 Department was dispatched to investigate a report of a theft at a gas station. The officer stopped
3 the suspects' vehicle nearby. Respondent was a passenger in the front seat; there were three other
4 persons in the vehicle. The driver was arrested for failure to have a driver's license and the
5 vehicle was impounded. In a search of the vehicle before it was towed, the officer located a purse
6 belonging to the driver containing methamphetamine and controlled substance paraphernalia.
7 Respondent admitted to the officer that she had smoked methamphetamine just prior to making
8 contact with the officer. Respondent was evaluated and determined to be under the influence of
9 methamphetamine: elevated heart rate, a light, white coating on her tongue, dry mouth, and
10 dilated pupils. Respondent was arrested. During booking, she submitted a urine sample for
11 testing.

12 b. As a result of the arrest, on or about February 3, 2005, in a criminal proceeding
13 entitled *People of the State of California vs. Michelle Roongruangyot*, in San Bernardino County
14 Superior Court, case number MWV093989, Respondent entered a plea of guilty to violating
15 Health and Safety Code section 11550, subdivision (a), under the influence of a controlled
16 substance, to wit, methamphetamine, a misdemeanor.

17 c. As a result of the plea, on or about March 16, 2005, the court deferred
18 sentencing for a period of 18 months. Respondent agreed to complete a drug diversion program
19 pursuant to Penal Code section 1000. At a hearing on July 28, 2006, the court found that
20 Respondent failed to successfully complete diversion and the criminal proceedings were resumed.
21 Respondent failed to appear at a hearing on August 28, 2006, and a bench warrant was issued for
22 her arrest. At a hearing on September 5, 2006, the court found that Respondent was eligible for
23 Penal Code section 1210.1 probation. The court withheld judgment and Respondent was granted
24 conditional and revocable release for 24 months. Respondent was directed to enroll in a
25 counseling program and submit to controlled substance tests. At a hearing on September 9, 2008,
26 the court granted Respondent's petition for dismissal. The finding of guilty was set aside, a plea
27 of not guilty entered, and the complaint was dismissed pursuant to Penal Code section 1203.4.

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1 fines, and comply with DUI probation terms.

2 c. The facts that led to the conviction are that on or about the evening of February
3 26, 2011, a patrol deputy with the Riverside County Sheriff's Department was conducting a radar
4 speed enforcement off of a Moreno Valley roadway. As Respondent's vehicle approached him,
5 he obtained a speed reading of 55 miles per hour in a 45 mile per hour zone. As Respondent got
6 closer to the deputy's unit, he could hear Respondent's vehicle accelerating as if she was
7 "flooring the gas pedal." Respondent was traveling 64 miles per hour as it passed the deputy's
8 unit. The deputy caught up with Respondent and conducted an enforcement stop. Upon contact
9 with Respondent, the deputy could smell a strong odor of an alcoholic beverage coming from the
10 interior of the vehicle. Respondent denied having consumed alcohol. Respondent's husband and
11 one-year-old baby were passengers in the vehicle. The deputy observed that Respondent's eyes
12 were red, bloodshot, and watery. Respondent almost fell to the ground when she exited her
13 vehicle. Even though the deputy could smell a strong odor of alcohol on Respondent's breath,
14 she continued to deny she had consumed alcohol. Respondent submitted to a series of field
15 sobriety tests which she was unable to complete as explained and demonstrated by the deputy.
16 Respondent provided a breath sample which was analyzed with a BAC of .198 percent.
17 Respondent was arrested for driving under the influence of alcohol; during booking, she provided
18 a blood sample.

19 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Dangerous Use of Alcohol)**

21 17. Respondent's application for licensure is subject to denial under section 480,
22 subdivision (a)(3)(A) of the Code in that on or about February 26, 2011, as described in
23 paragraph 16, above, she used alcohol in a manner that was dangerous or injurious to herself and
24 to others, which would be a ground for discipline under section 4301, subdivision (h) of the Code
25 for a registered pharmacy technician.

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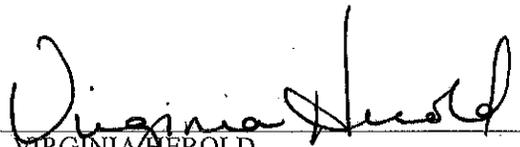
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PRAYER

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 Michelle Orpilla for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/13


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

SD2013705600