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

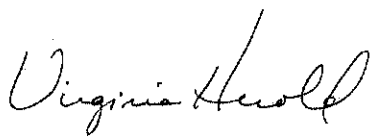
In the Matter of the Statement of Issues
Against:
ANGEL PATRICE MARTINEZ
Pharmacy Technician Applicant

Respondent.

Case No. 5369

**WITHDRAWAL OF STATEMENT OF
ISSUES**

The Statement of Issues No. 5369 against Angel Patrice Martinez (Respondent) is withdrawn without prejudice. Respondent has withdrawn the request for a hearing regarding the denial of the application for a pharmacy technician registration. The denial of the application is affirmed.



DATED: 9/30/2015

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

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

11 In the Matter of the Statement of Issues
12 Against:
13 **ANGEL PATRICE MARTINEZ**
14 Pharmacy Technician Registration Applicant
15 Respondent.

Case No. 5369

STATEMENT OF ISSUES

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about April 9, 2014, the Board received an application for a Pharmacy
22 Technician Registration from Angel Patrice Martinez (Respondent). On or about March 31,
23 2014, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application. The Board denied the application on November 5, 2014.

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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 480 of the Code states, in pertinent part:

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

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

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

1 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
4 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
5 of the dismissal.

6 "(d) A board may deny a license regulated by this code on the ground that the applicant
7 knowingly made a false statement of fact required to be revealed in the application for the
8 license."

9 5. Section 490 of the Code provides that a board may suspend or revoke a license on the
10 ground that the licensee has been convicted of a crime substantially related to the qualifications,
11 functions, or duties of the business or profession for which the license was issued.

12 6. Section 4300 of the Code states, in pertinent part:

13

14 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct.
15 The board may, in its sole discretion, issue a probationary license to any applicant for a license
16 who is guilty of unprofessional conduct and who has met all other requirements for licensure.
17 The board may issue the license subject to any terms or conditions not contrary to public policy.
18 ..?"

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

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

23

24 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
25 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
26 whether the act is a felony or misdemeanor or not.

27

28 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous

1 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
2 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
3 to the extent that the use impairs the ability of the person to conduct with safety to the public the
4 practice authorized by the license.

5

6 "(l) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
8 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
9 substances or of a violation of the statutes of this state regulating controlled substances or
10 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
11 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
12 The board may inquire into the circumstances surrounding the commission of the crime, in order
13 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
14 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
15 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
16 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
17 of this provision. The board may take action when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal or when an order granting probation is made
19 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
20 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
21 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
22 indictment.

23

24 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

28 "(p) Actions or conduct that would have warranted denial of a license. . . ."

1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Convictions of Substantially Related Crimes)**

11 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
12 that Respondent was convicted of substantially related crimes, as follows:

13 a. On or about August 3, 2011, after pleading nolo contendere, Respondent was
14 convicted of one interlineated misdemeanor count of violating Vehicle Code section 23103
15 [reckless driving] in the criminal proceeding entitled *The People of the State of California v.*
16 *Angel Patrice Martinez* (Super. Ct. L.A. County, 2011, No. 1VY02063). The Court placed
17 Respondent on 36 months summary probation, ordered her to complete a Three-Month First
18 Offender Alcohol and Other Drug Education and Counseling program, a Hospital and Morgue
19 program, and complete 100 hours of community service.

20 b. The circumstances surrounding the conviction are that on or about April 16, 2011,
21 California Highway Patrol officers conducted a traffic stop whereby an officer smelled the odor
22 of an alcoholic beverage emitting from Respondent's breath and person. Respondent only had a
23 New York learner's permit and no California identification. During a Preliminary Alcohol
24 Screening (PAS) Test, Respondent's blood alcohol content (BAC) was determined to be 0.082%
25 and 0.081%. Additional tests revealed a BAC of 0.06% and 0.06% respectively.

26 c. On or about June 5, 2012, after pleading guilty, Respondent was convicted of one
27 count of violating New York Penal Law Code section 240.20, subdivision 7 [disorderly conduct:
28 create hazardous or physically offensive condition], in the criminal proceeding entitled *The*

1 *People of the State of New York v. Angel P. Martinez* (N.Y. Dist. Ct., Nassau County, 2012, No.
2 2011NA027151). The Court placed Respondent on one year conditional discharge.

3 d. The circumstances surrounding the conviction are that on or between December 3,
4 2011 to December 7, 2011, while working at Macy's, Respondent rang up multiple gift cards in
5 the total amount of \$2,150.00 without making payment. Respondent subsequently used the gift
6 cards at various locations of Macy's in the total amount of \$1,950.00. Gift cards in the amount of
7 \$200.00 were subsequently recovered from Respondent.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

10 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
11 that on or about December 3, 2011, Respondent committed acts involving dishonesty, fraud, or
12 deceit with the intent to substantially benefit herself or another, or substantially injure another.
13 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 9,
14 subparagraph c and d, inclusive, as though set forth fully.

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 **(Knowingly Made a False Statement of Fact)**

17 11. Respondent application is subject to denial under section 480, subdivision (c), in that
18 on or about March 31, 2014, Respondent knowingly made a false statement of fact by failing to
19 disclose two convictions on her application for licensure to the Board. Complainant refers to, and
20 by this reference incorporates, the allegations set forth in paragraph 9, as though set forth fully.

21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts Warranting Denial of Licensure)**

23 12. Respondent's application is subject to denial under sections 4301, subdivision (o) and
24 / or (p), and 480, subdivisions (a)(3), on the grounds of unprofessional conduct, in that
25 Respondent committed acts which if done by a licentiate of the business and profession in
26 question, would be grounds for suspension or revocation of her license, as follows:

27 a. On or about August 3, 2011 and June 5, 2012, Respondent was convicted of crimes
28 substantially related to the qualifications, functions, or duties of a pharmacy technician which to a

1 substantial degree evidence her present or potential unfitness to perform the functions authorized
2 by her license in a manner consistent with the public health, safety, or welfare, in violation of
3 sections 490 and 4301, subdivision (l), and in conjunction with California Code of Regulations,
4 title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations
5 set forth above in paragraph 9, as though set forth fully.

6 b. On or about December 3, 2011, Respondent committed acts involving moral
7 turpitude, dishonesty, fraud, deceit or corruption, in violation of section 4301, subdivision (f).
8 Complainant refers to, and by this reference incorporates, the allegations set forth above in
9 paragraphs 9, subparagraph d, inclusive, as though set forth fully.

10 c. On or about April 16, 2011, Respondent used alcoholic beverages to an extent or in a
11 manner dangerous or injurious to herself, any person, or the public, in violation of section 4301,
12 subdivision (h). Complainant refers to, and by this reference incorporates, the allegations set
13 forth above in paragraph 9, subparagraph b, inclusive, as though set forth fully.

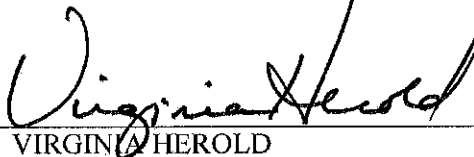
14 **PRAAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board issue a decision:

- 17 1. Denying the application of Angel Patrice Martinez for a Pharmacy Technician
18 Registration; and
19 2. Taking such other and further action as deemed necessary and proper.

20
21 DATED: _____

5/28/15



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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