

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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. 5937

12 **HERBERT SHERIT CASTILLO**
13 **Pharmacy Technician License Applicant**
14 Respondent.
15

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 2. On or about November 24, 2015, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a/an Pharmacy Technician License from Herbert Sherit Castillo
22 (Respondent). On or about October 29, 2015, Herbert Sherit Castillo certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on May 6, 2016.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

“(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, 1203.4a, or 1203.41 of the Penal Code.

....

“(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.

....

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

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

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

1 6. Section 493 states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the ground
5 that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in order
9 to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

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

12 7. Section 4300, subdivision (c), states:

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

18 "(1) Medical or psychiatric evaluation.

19 "(2) Continuing medical or psychiatric treatment.

20 "(3) Restriction of type or circumstances of practice.

21 "(4) Continuing participation in a board-approved rehabilitation program.

22 "(5) Abstention from the use of alcohol or drugs.

23 "(6) Random fluid testing for alcohol or drugs.

24 "(7) Compliance with laws and regulations governing the practice of pharmacy."

25 8. Section 4301 states, in pertinent part:

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

1

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

5 “(g) Knowingly making or signing any certificate or other document that falsely represents
6 the existence or nonexistence of a state of facts.

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

12

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

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

18 “(l) The conviction of a crime substantially related to the qualifications, functions, and
19 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
21 substances or of a violation of the statutes of this state regulating controlled substances or
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The
24 board may inquire into the circumstances surrounding the commission of the crime, in order to fix
25 the degree of discipline or, in the case of a conviction not involving controlled substances or
26 dangerous drugs, to determine if the conviction is of an offense substantially related to the
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
28 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of

1 this provision. The board may take action when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made suspending
3 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
4 Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
5 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . ."

6 **REGULATORY PROVISION**

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

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

14 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

15 10. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal
16 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug
17 pursuant to section 4022.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(Conviction of a Substantially Related Crime)**

20 11. Respondent's application is subject to denial under section 480, subdivisions (a)(1), in
21 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
22 convicted of crimes substantially related to the qualifications, functions or duties of pharmacy
23 technician, as follows:

24 a. On or about July 15, 2002, after pleading nolo contendere, Respondent was convicted
25 of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an equal to or
26 greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled *The People*
27 *of the State of California v. Herbert Sherit Castillo* (Super. Ct. L.A. County, 2002,
28 No. 2MT06877). The Court sentenced Respondent to 48 hours in jail, placed him on 36 months

1 probation, and ordered him to complete a Three-Month First-Offender Alcohol Program.

2 b. The circumstances underlying the conviction are that on or about July 13, 2002,
3 Respondent drove a vehicle while under the influence of alcohol.

4 c. On or about February 3, 2003, after pleading guilty and admitting to a prior conviction
5 of violating Vehicle Code section 23152(a) on July 15, 2002, Respondent was convicted of one
6 misdemeanor count violating Vehicle Code section 23152(a) [drive while under the influence of
7 alcohol/drugs] in the criminal proceeding entitled *The People of the State of California v. Herbert*
8 *Sherit Castillo* (Super. Ct. Ventura County, 2003, No. 2003000942MA). The Court sentenced
9 Respondent to 30 days in jail, placed him on 60 months formal probation, and ordered him to
10 complete the Drinking Driver Multiple-Conviction Program.

11 d. The circumstances underlying the conviction are that on or about January 3, 2003,
12 after admitting to drinking three or four beers, Respondent drove his vehicle while under the tested
13 influence of a 0.10/0.10% BAC and unknowingly with the vehicle having a flat tire. In addition,
14 Respondent was found in possession of 0.46 grams of marijuana.

15 e. On or about December 12, 2011, after pleading guilty, Respondent was convicted of
16 two felony counts, Count 1, violating Vehicle Code section 23152(a) [drive while under the
17 influence of alcohol/drugs] and Count 2, violating Vehicle Code section 23152(b) [drive with an
18 equal to or greater than 0.08% BAC], in the criminal proceeding entitled *The People of the State*
19 *of California v. Herbert Castillo* (Super. Ct. L.A. County, 2011, No. SA079391). On or about
20 January 26, 2012, the Court sentenced Respondent to one day in jail, placed him on five years
21 formal probation, and ordered him to complete a one year Cornerstone House Program.

22 f. The circumstances underlying the conviction are that on or about September 10, 2011,
23 after admittedly drinking beer at home, Respondent drove while under the tested influence of
24 a 0.11/0.11% BAC.

25 g. On or about December 15, 2011, after pleading nolo contendere and admitting to
26 sustaining prior violations of Vehicle Code section 23152, Respondent was convicted of one
27 misdemeanor count of violating Vehicle Code section 23152(b) [drive with an equal to or greater
28 than 0.08% BAC] in the criminal proceeding entitled *The People of the State of California v.*

1 *Herbert Castillo* (Super. Ct. L.A. County, 2011, No. 1GN04147). On or about January 26, 2012,
2 the Court sentenced Respondent to 120 days in jail, placed him on five years probation, and
3 ordered him to complete a 120 day residential alcohol program.

4 h. The circumstances underlying the conviction are that on or about September 26, 2011,
5 after admittedly drinking approximately six or seven beers, Respondent drove his vehicle and was
6 involved in a two car collision by making an unsafe turning movement. Responding law
7 enforcement officers found Respondent sleeping in his vehicle that was stopped in the middle of
8 the road with the vehicle's engine running and no lights on. Respondent further exclaimed "I'm
9 drunk" to the officers.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(False Statement in License Application)**

12 12. Respondent's application is subject to denial under section 480, subdivision (d), in that
13 on or about October 29, 2015, Respondent knowingly made a false statement of fact that was
14 required to be revealed in his application for licensure when he admitted to sustaining two of his
15 four criminal convictions. Respondent admitted to criminal convictions on or about December 12,
16 2011, and on or about January 26, 2012 [sic December 15, 2011] and failed to admit to sustaining
17 criminal convictions on or about July 15, 2002, and on or about March 3, 2003. Complainant
18 refers to and by this reference incorporates the allegations set forth above in paragraph 11,
19 inclusive, as though set forth fully.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Conduct Warranting Licensee Discipline)**

22 13. Respondent's application is subject to denial under section 480, subdivisions
23 (a)(3)(A)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that
24 Respondent committed acts which if done by a licensee would be grounds for discipline.
25 Respondent violated sections, as follows:

26 a. Sections 490, 4300 and 4301, subdivision (l), on the grounds of unprofessional
27 conduct, in that Respondent sustained criminal convictions on or about July 15, 2002, March 3,
28 2003, December 12, 2011, and December 15, 2011. Complainant refers to and by this reference

1 incorporates the allegations set forth above in paragraph 10, as though set forth fully.

2 b. Section 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in
3 that on or about October 29, 2015, Respondent committed acts involving moral turpitude,
4 dishonest, fraud, deceit, or corruption when completing his license application with the Board.

5 Complainant refers to and by this reference incorporates the allegations set forth above in
6 paragraph 12, inclusive, as though set forth fully.

7 c. Section 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in
8 that on or about October 29, 2015, Respondent knowingly and falsely represented the existence
9 or nonexistence of a state of facts in his license application with the Board. Complainant refers to
10 and by this reference incorporates the allegations set forth above in paragraph 12, inclusive, as
11 though set forth fully.

12 d. Section 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in
13 that on or about July 13, 2002, January 3, 2003, September 10, 2011, and September 26, 2011,
14 Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious
15 to himself or others when he drove while under the influence of alcohol. Complainant refers to
16 and by this reference incorporates the allegations set forth above in paragraph 11, inclusive, as
17 though set forth fully.

18 e. Section 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in
19 that Respondent was convicted of more than one misdemeanor or any felony involving the use,
20 consumption, or self-administration of alcoholic beverages. Complainant refers to and by this
21 reference incorporates the allegations set forth above in paragraph 11, inclusive, as though set
22 forth fully.

23 **PRAYER**

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

26 1. Denying the application of Herbert Sherit Castillo for a Pharmacy Technician License;
27 and

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

2. Taking such other and further action as deemed necessary and proper.

DATED:

3/18/17



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

LA2016602434
52405782.doc