

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
3 BRIAN WEISEL
Deputy Attorney General
4 State Bar No. 251111
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9089
7 Facsimile: (619) 645-2061
E-mail: Brian.Weisel@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against:	Case No. 6152
13 KALEEN RENEE ARIAS	
14 Pharmacy Technician Registration Applicant	STATEMENT OF ISSUES
15 Respondent.	

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 9, 2016, the Board received an application for a Pharmacy
23 Technician Registration from Kaleen Renee Arias (Respondent). On or about August 3, 2016,
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. On or about September 15, 2016, Respondent sent a second
26 application and certified under penalty of perjury to the truthfulness of all statements, answers,
27 and representations in the application. The Board denied the application on March 13, 2017.

28 ///

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 unless otherwise
4 indicated.

5 4. Section 4300, subdivision (c) of the Code states:

6 (c) The board may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states, in pertinent part:

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

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

14 (2) Conviction of a crime.

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

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

19 ...

20 6. Section 480 of the Code states:

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

23 (1) Been convicted of a crime. A conviction within the meaning of this
24 section means a plea or verdict of guilty or a conviction following a plea of *nolo*
25 *contendere*. Any action that a board is permitted to take following the establishment
26 of a conviction may be taken when the time for appeal has elapsed, or the judgment
27 of conviction has been affirmed on appeal, or when an order granting probation is
28 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.

1 (b) Notwithstanding any other provision of this code, a person shall not be
2 denied a license solely on the basis that he or she has been convicted of a felony if
3 he or she has obtained a certificate of rehabilitation under Chapter 3.5
4 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that
5 he or she has been convicted of a misdemeanor if he or she has met all applicable
6 requirements of the criteria of rehabilitation developed by the board to evaluate
7 the rehabilitation of a person when considering the denial of a license under
8 subdivision (a) of Section 482.

6 (c) Notwithstanding any other provisions of this code, a person shall not be
7 denied a license solely on the basis of a conviction that has been dismissed
8 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant
9 who has a conviction that has been dismissed pursuant to Section 1203.4,
10 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

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

11 7. Code section 482 states:

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

14 (a) Considering the denial of a license by the board under section 480; or

15 (b) Considering suspension or revocation of a license under section 490.

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

18 8. Section 492 of the Code states:

19 Notwithstanding any other provision of law, successful completion of any
20 diversion program under the Penal Code, or successful completion of an alcohol
21 and drug problem assessment program under Article 5 (commencing with section
22 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
23 any agency established under Division 2 ([Healing Arts] commencing with
24 Section 500) of this code, or any initiative act referred to in that division, from
25 taking disciplinary action against a licensee or from denying a license for
26 professional misconduct, notwithstanding that evidence of that misconduct may
27 be recorded in a record pertaining to an arrest.

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

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

9. Code section 493 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.

...

10. Code section 4300, subsection (c) states:

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

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

11. Code section 4301 states, in pertinent part:

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:

- (a) Procurement of a license by fraud or misrepresentation.
- ...
- (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.

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

2 (h) The administering to oneself, of any controlled substance, or the use of
3 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter,
5 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.

6 ...
7 (j) The violation of any of the statutes of this state, of any other state, or of
the United States regulating controlled substances and dangerous drugs.

8 ...
9 (l) The conviction of a crime substantially related to the qualifications,
10 functions, and duties of a licensee under this chapter. The record of conviction of
11 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
12 States Code regulating controlled substances or of a violation of the statutes of
13 this state regulating controlled substances or dangerous drugs shall be conclusive
14 evidence of unprofessional conduct. In all other cases, the record of conviction
15 shall be conclusive evidence only of the fact that the conviction occurred. The
16 board may inquire into the circumstances surrounding the commission of the
17 crime, in order to fix the degree of discipline or, in the case of a conviction not
18 involving controlled substances or dangerous drugs, to determine if the conviction
19 is of an offense substantially related to the qualifications, functions, and duties of
20 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.

21 ...
REGULATORY PROVISIONS

22 12. California Code of Regulations, title 16, section 1768 states:

23 (a) Where the board has denied an application for a license, the earliest
24 date on which the applicant may reapply for a license is one year after the
effective date of the denial.

25 (b) All competent evidence of rehabilitation presented will be considered
26 upon a reapplication. The board shall use the criteria listed in section 1769 when
27 considering evidence of rehabilitation.

28 13. California Code of Regulations, title 16, section 1769 states, in pertinent part:

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

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

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

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

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

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

16

17 14. California Code of Regulations, title 16, section 1770 states:

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

25 **DRUGS**

26 15. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety
27 Code section 11055, subdivision (d)(2) and is a dangerous drug pursuant to Code section 4022.

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(Professional Misconduct – Under the Influence of a Controlled Substance)

16. Respondent's application is subject to denial under sections 4300, subdivision (c), and
480, subdivision (a)(3) of the Code in that on November 29, 2011, Respondent engaged in
unprofessional conduct which, if done by a licentiate, would be grounds for suspension or
revocation of a license. The circumstances are as follows:

a. On or about September 5, 2011, Respondent was arrested by Corona Police
Department on suspicion of being under the influence of methamphetamine.

1 b. On November 29, 2011, Respondent pled guilty to a violation of Health and
2 Safety Code section 11500(a) – Under the Influence of a Controlled Substance –
3 Methamphetamine, and granted a diversion program and deferred entry of judgment pursuant to
4 Penal Code section 1000.

5 c. On September 13, 2016, Respondent successfully completed the diversion
6 program and her case was dismissed pursuant to Penal Code section 851.90.

7 17. By using methamphetamine, Respondent administered a controlled substance to
8 herself, and violated Health and Safety Code section 11550(a).

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Knowingly making false statement of material fact in application)**

11 18. Respondent's application is subject to denial under sections 475, subsection (a)(1),
12 and 480, subsection (a)(3) of the Code in that she knowingly made a false statement of material
13 fact, or knowingly omitted to state a material fact, in her licensure application. The circumstances
14 are set forth in paragraphs 15 through 16, which are incorporated here by reference, and also as
15 follows:

16 a. On June 9, 2016, Respondent submitted an application for licensure to the
17 Board, and failed to disclose her arrest and plea in the 2011 incident discussed above.

18 b. On August 23, 2016, the Board sent a letter notifying Respondent that her
19 application was deficient, due to the 2011 arrest and guilty plea which came up on her background
20 clearance check.

21 c. On September 20, 2016, Respondent submitted a new licensure application, on
22 which she disclosed the 2011 arrest and plea discussed above.

23 d. With her new application, Respondent provided a letter, stating, "I'm sorry I
24 didn't disclose this in my application I should have been upfront about it. But I was too scared to
25 be turned down for something I did 5 years ago."

26 19. By initially withholding her 2011 criminal case in her license application, Respondent
27 attempted to procure a license by misrepresentation, committed a dishonest act, and signed a
28 document that misrepresented a state of facts.

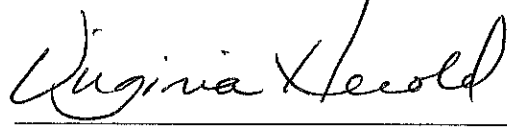
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Kaleen Renee Arias for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/10/17



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

SD2017705167
81711030.doc