

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

In the Matter of the Statement of Issues  
Against:

MICHAEL CASTIEL,

Respondent.

Case No. 3719

OAH No. 2010120414

**PROPOSED DECISION**

This matter was heard by Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, on August 5, 2011, in Los Angeles, California.

Langston M. Edwards, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

Michael Castiel (Respondent) represented himself.

Oral and documentary evidence was received. The parties submitted the matter for decision on August 5, 2011.

**FACTUAL FINDINGS**

1. Complaint filed the Statement of Issues in her official capacity.
2. On May 13, 2009, the Board received an application for a pharmacy technician license from Respondent. On April 13, 2010, the Board denied the Respondent's application.
3. a. On March 19, 2008, the Ventura County Superior Court, in case number 2007011067, convicted Respondent on his nolo contendere plea, of violating Penal Code section 273.5, subdivision (a) (inflicting corporal punishment on a spouse), a misdemeanor. The court sentenced Respondent to five years formal probation, on terms that included five days of jail time; fines and fees totaling \$2,542; and one year of mandatory domestic violence counseling.

b. The facts underlying this conviction are that Respondent was angry with his wife, and he threw a metal box at her.

4. a. On May 4, 2000, the Los Angeles County Superior Court, in case number 035384, convicted Respondent on his nolo contendere plea, for violating two counts of Vehicle Code section 4463, subdivision (a)(2) (uttering a false certificate), a misdemeanor. The court sentenced Respondent to 12 months summary probation, on terms that included performing 250 hours of community service work, and paying a \$500 fine.

b. The facts underlying this conviction are that Respondent ran a smog-check business, which issued false smog certificates.

5. a. On April 3, 1996, the Van Nuys Municipal Court, in case number 6PN0124501, convicted Respondent of violating Penal Code section 242 (battery), a misdemeanor. The court sentenced Respondent to 12 months summary probation, on terms that included performing 10 days of CalTrans work, and paying a \$100 fine.

b. The facts underlying this conviction are that Respondent had an altercation with his wife, and he threw an object at her.

c. On March 19, 2010, the conviction was dismissed pursuant to Penal Code section 1203.4.

6. Respondent did not disclose his convictions on his application. Question six asks "Have you ever been convicted or plead no contest to a violation of any law of a foreign country, the United States, or any state laws or local ordinances?" It then states "You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4." Respondent answered "no."

7. Respondent sincerely apologized for misleading the Board. He explained that he thought his convictions were expunged and that he did not have to disclose them. Respondent recognized that it was a poor decision.

8. Respondent's explanation for his nondisclosure was not convincing. Although Respondent's 1996 conviction was dismissed, there was no evidence that his 2000 or 2008 convictions were dismissed or expunged. Nonetheless, even if all of Respondent's convictions were dismissed, the application language clearly requires disclosure.

9. Respondent is married and has children. He worked hard to obtain the necessary education to become a pharmacy technician. Respondent did an internship with All Med Drugs in Thousand Oaks, for approximately six months. He developed a trusting relationship with the owner, who offered him a job upon obtaining his pharmacy technician registration. He explained that arguments with his wife occurred during a difficult time in their lives, when she lost her mother to cancer. Respondent stated that their circumstances

have changed. Respondent learned how to control his temper through the counseling sessions. With regard to his conviction for issuing false smog certificates, Respondent denied responsibility for the underlying incidents, claiming that his employee committed the misconduct without his knowledge. He completed all probation requirements, and paid all fines related to his convictions. Respondent has no other pending criminal matters.

10. Respondent's wife, Michelle Castiel, testified at the hearing. She works as a registered nurse for Kaiser Permanente in Panorama City. She explained how difficult her mother's death was for her, and the strain that it caused on their family. Mrs. Castiel spoke highly of Respondent's scholastic achievements; she believes that he has the intellectual capacity to be a pharmacy technician. She also described some of the community service that Respondent and his family partake in, such as working at the teen center, the animal shelter, and that Respondent has served as a volunteer coach to youth sports teams.

### LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a pharmacy technician license, pursuant to Business and Professions Code sections 490, 480, subdivisions (a)(1), and California Code of Regulations, title 16, section 1770, on the grounds that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician, as set forth in factual findings 3 through 5.

2. A crime shall be considered "substantially related" if "to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's convictions for battery, inflicting corporal punishment on his spouse, and issuing false smog certificates, fall within the definition of "substantial relationship." His actions evidence a present or potential unfitness to discharge the duties of a licensed pharmacy technician.

3. Cause exists to deny Respondent's application for a pharmacy technician license, pursuant to Business and Professions Code sections 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, as set forth in factual finding 4.

4. Cause exists to deny Respondent's application for a pharmacy technician license, pursuant to Business and Professions Code section 480, subdivision (c), in that Respondent knowingly made a false statement on his application to the Board, as set forth in factual findings 6 and 8.

5. Cause exists to deny Respondent's application for a pharmacy technician license, pursuant to Business and Professions Code section 480, subdivision (a)(3), in that he committed acts which if done by a licensee, would be grounds to discipline the license, as set forth in factual findings 3 through 6, and 8.

6. California Code of Regulations, title 16, section 1769, subdivision (a), provides that the Board, when considering the denial of a license under Business and Professions Code section 480, will consider the following criteria in evaluating the rehabilitation of the applicant and his present eligibility for licensing:


- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

7. Applying the criteria, Respondent's application must be denied. He was convicted for issuing false smog certificates, a crime which bears on his honesty; and he also failed to disclose any of his convictions, which cast doubt on his credibility. Although three years have passed since Respondent's last conviction, the mere passage of time does not establish rehabilitation. In Respondent's favor, he completed his probation, his 1996 conviction was expunged, and he has no subsequent convictions or misconduct since 2008. Although Respondent has made some progress, he failed to establish that he has sufficiently rehabilitated himself to justify a probationary license at this time. His fitness for performing the functions of a licensed pharmacy technician consistent with the public health, safety, and welfare was not established. Accordingly, denial of his application is warranted at this time.

ORDER

The application of Respondent Michael Castiel for a pharmacy technician license is denied.

DATED: August 15, 2011

  
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AMY C. LAHR  
Administrative Law Judge  
Office of Administrative Hearings

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

10 In the Matter of the Statement of Issues  
11 Against:  
12 **MICHAEL CASTIEL**  
2485 Vista Wood Cir. #13  
13 Thousand Oaks, CA 91362  
Applicant for Pharmacy Technician  
14 Registration  
15 Respondent.

Case No. 3719

**STATEMENT OF ISSUES**

16  
17  
18 Complainant alleges:

19 **PARTIES**

- 20  
21 1. Virginia K. Herold ("Complainant") brings this Statement of Issues solely in her  
22 official capacity as the Executive Officer of the Board of Pharmacy ("Board").  
23 2. On or about May 13, 2009, the Board of Pharmacy received an application for  
24 Pharmacy Technician Registration from Michael Castiel ("Respondent"). On or about May 9,  
25 2009, Michael Castiel certified under penalty of perjury to the truthfulness of all statements,  
26 answers, and representations in the application. The Board denied the application on April 13,  
27 2010.  
28 //

JURISDICTION

1  
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.

STATUTORY PROVISIONS

5  
6  
7 4. Section 480 states, in pertinent part:

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

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

17 (2) Done any act involving dishonesty, fraud or deceit with the intent to  
18 substantially benefit himself or another, or substantially injure another; or

19 (3) Done any act which if done by a licentiate of the business or profession in  
20 question would be grounds for suspension or revocation of license.

21 ...

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

25 5. Section 493 of the Code states:

26 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
27 the department pursuant to law to deny an application for a license or to suspend or revoke a  
28 license or otherwise take disciplinary action against a person who holds a license, upon the

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

7  
8 **REGULATORY PROVISIONS**

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

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

16  
17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 (Conviction of Substantially Related Crime)

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

23 a. On or about March 19, 2008, after pleading nolo contendere, Respondent was  
24 convicted of violating Pen. Code section 273.5(a) [infliction of corporal injury on current or  
25 former spouse/cohabitant], a misdemeanor, in the criminal proceeding entitled *The People of the*  
26 *State of California v. Michael Castiel* (Super. Court County of Ventura, 2007, No. 2007011067).  
27 Respondent was sentenced to 5 days in jail and placed on formal probation for 36 months (with  
28 terms and conditions). Respondent was ordered to attend domestic violence counseling sessions

1 for a period of one year, participate in the Direct Work program and pay approximately \$2,542.00  
2 in fines, fees and penalties.

3           b. The underlying circumstances occurred on or around March 18, 2007, when  
4 pursuant to an argument with his wife, Respondent hit his wife on the back of her legs with his  
5 fists, causing visible bruises. The following day on or around March 19, 2007, Respondent  
6 became angry with his wife and threw a metal box at her, which struck her in the side of the head  
7 causing visible injury. On or around March 24, 2007 Ventura County Sheriffs contacted  
8 Respondent, who admitted that he and his wife "have a very volatile relationship, which often  
9 leads to physical violence" between the two of them. Respondent was subsequently arrested for  
10 domestic violence.

11           c. On or around May 4, 2000, Respondent was convicted of violating two counts  
12 of Veh. Code section 4463(a)(2) [uttering a false certificate], a misdemeanor, in the criminal  
13 proceeding entitled *The People of the State of California v. Michael Castiel* (Super. Court County  
14 of Los Angeles, 2000, No. 035384). Respondent was ordered to perform 250 hours of  
15 community service and pay \$2,500.00 to the Bureau of Automotive Repair and \$500.00 in  
16 restitution.

17           d. The underlying circumstances occurred on or around October 21, 1998 when  
18 Respondent knowingly uttered, published, passed and attempted to pass as true and genuine, a  
19 false, altered, forged and counterfeited smog certificate with intent to defraud.

20           e. On or around April 3, 1996, Respondent was convicted of violating one count  
21 of Pen. Code 242 [battery], a misdemeanor, in the criminal proceeding entitled *The People of the*  
22 *State of California v. Michael Castiel* (Van Nuys Municipal Court, 1996, No. 6PN0124501).  
23 Respondent was sentenced to 12 months of probation and ordered to participate in a work  
24 program. Respondent's conviction was later dismissed pursuant to Pen. Code section 1203.4.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Act Involving Dishonesty)

3 8. Respondent's application is subject to denial under section 480, subdivision (a)(2) of  
4 the Code, in that Respondent committed acts involving dishonesty. Complainant now refers to  
5 and incorporates all the allegations in paragraph 7, subparagraphs (c) and (d) as though set forth  
6 fully herein.  
7

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 (Knowingly Making a False Statement of Fact on Application for Licensure)

10 9. Respondent's application is subject to denial under section 480, subdivision (c) of the  
11 Code, in that Respondent knowingly made a false statement of fact on his application for  
12 licensure to the Board. The circumstances are that on or about May 9, 2009, Michael Castiel  
13 certified under penalty of perjury to the truthfulness of all statements, answers, and  
14 representations in the application for licensure to the Board. Specifically, in response to Question  
15 No. 6, which asks, "Have you ever been convicted of or pled no contest to a violation of any law  
16 of a foreign country, the United States or any state laws or local ordinances," Respondent  
17 answered "No." In doing so, Respondent made a false statement of fact concerning his previous  
18 convictions. Complainant now refers to and incorporates all the allegations in paragraph 7, and  
19 all subparagraphs as though set forth fully herein.  
20

21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 (Acts If Done By Licentiate Would be Grounds for Suspension or Revocation)

23 10. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
24 the Code, in that Respondent committed acts which if done by a licentiate in the profession would  
25 be grounds for suspension or revocation of license. Complainant now refers to and incorporates  
26 all the allegations in paragraphs 7, 8 and 9, including all subparagraphs as though set forth fully  
27 herein.  
28

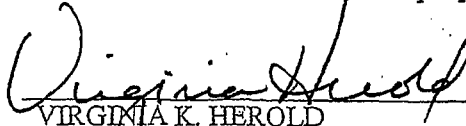
PRAYER

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

1. Denying the application of Michael Castiel for Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED:

9/23/10



VIRGINIA K. HEROLD  
Executive Officer  
Board of Pharmacy  
State of California  
*Complainant*

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statement of issues.rtf