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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:

BENJAMIN CARDENAS
13702 Flallon Avenue
Norwalk, CA 90650
**Applicant for a Pharmacy Technician
Registration**

Respondent.

Case No. 3771
OAH No. L-2011070278

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about May 27, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 3771 against Benjamin Cardenas (Respondent) before the Board of Pharmacy.

2. On or about May 13, 2009, Respondent filed an application dated October 3, 2008, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

3. On or about April 13, 2010, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about June 9, 2010, Respondent appealed the Board's denial of his application and requested a hearing.

4. On or about June 29, 2011, Teresa Sutton, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 3771, Statement to

1 Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5,
2 11507.6, and 11507.7, and Notice from Respondent/Applicant to Respondent's address on the
3 application form, which was and is 13702 Flallon Avenue, Norwalk, CA 90650. A copy of the
4 Statement of Issues is attached as Exhibit A, and is incorporated herein by reference.

5 5. Service of the Statement of Issues was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c)

7 6. On or about June 9, 2010, Respondent appealed the denial of his application and
8 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
9 address on the application and it informed him that an administrative hearing in this matter was
10 scheduled for February 9, 2012. Respondent failed to appear at that hearing.

11 7. Business and Professions Code section 118 states, in pertinent part:

12 (a) The withdrawal of an application for a license after it has been filed with a
13 board in the department shall not, unless the board has consented in writing to such
14 withdrawal, deprive the board of its authority to institute or continue a proceeding
15 against the applicant for the denial of the license upon any ground provided by law or
16 to enter an order denying the license upon any such ground.

17 8. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 of the accusation not expressly admitted. Failure to file a notice of defense shall
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
22 may nevertheless grant a hearing.

23 9. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent; and where the burden of proof is on the respondent to establish that the
28 respondent is entitled to the agency action sought, the agency may act without taking
evidence.

10 Pursuant to its authority under Government Code section 11520, the Board finds
11 Respondent is in default. The Board will take action without further hearing and based on
12 evidence on file herein finds that the allegations in Statement of Issues No. 3771 are true.

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DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Benjamin Cardenas has
3 subjected his application for a Pharmacy Technician Registration to denial.

4 2. Service of Statement of Issues No. 3771 and related documents was proper and in
5 accordance with the law.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure
8 based upon the following violations alleged in the Statement of Issues:

9 a. Business and Professions Codes section 480(a)(1) - *Convictions of Substantially*
10 *Related Crimes*. As set forth in greater detail in the Statement of Issues (Exhibit A), between the
11 years 2002 and 2009, Respondent was convicted of five (5) crimes which were substantially
12 related to the qualifications, functions and duties of the license.

13 (1) In 2002, Respondent was convicted of receiving stolen property in violation
14 of Penal Code section 496(a), a misdemeanor.

15 (2) In August 2004, Respondent was convicted of reckless driving in violation
16 of Vehicle Code section 23103(a), a misdemeanor. Respondent had been arrested for driving
17 under the influence of alcohol or drugs with blood alcohol content test results of 0.15% and
18 0.16% at booking, well in excess of the 0.08% legal limit, but pled to the reckless driving charge
19 instead.

20 (3) In May 2005, Respondent was convicted of driving without a valid driver's
21 license in violation of Vehicle Code section 12500(a) a misdemeanor. This was for driving in a
22 suspended license as a result of the August 2004 conviction.

23 (4) In June 2005, Respondent was convicted of driving under the influence of
24 alcohol or drugs in violation of Vehicle Code section 23152(a), a misdemeanor.

25 (5) In 2009, Respondent was convicted of spousal battery in violation of Penal
26 Code section 243(e)(1), a misdemeanor;

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1 b. Business and Professions Code section 480(a)(2) - *Acts Involving Dishonesty,*
2 *Fraud or Deceit.* This cause for denial was alleged on the basis of the conviction for receiving
3 stolen property;

4 c. Business and Professions Code section 480(c) - *Knowingly Made a False*
5 *Statement of Fact.* This cause for denial was based on the fact that Respondent failed to disclose
6 his criminal history, as he was required to do by law, on his application; and

7 d. Business and Professions Code sections 480(a)(3)(A), (a)(3)(B) and 4301(p) -
8 *Acts Warranting Denial of Licensure.* Based on his history of convictions, Respondent evidenced
9 to a substantial degree his present or potential unfitness to perform the functions authorized by his
10 license in a manner consistent with the public, health, safety or welfare. If these acts had been
11 committed by a licentiate of the profession, it would be grounds for suspension or revocation of
12 his license. Denial of the application is warranted.

13 **ORDER**

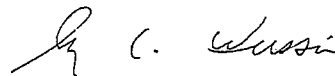
14 ***IT IS SO ORDERED*** that the application of Respondent Benjamin Cardenas is hereby
15 denied.

16 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
17 written motion requesting that the Decision be vacated and stating the grounds relied on within
18 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
19 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

20 This decision shall become effective on June 25, 2012.

21 It is so ORDERED on May 25, 2012.

22 BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS
24 STATE OF CALIFORNIA



25 By

26 STANLEY C. WEISSER
27 Board President
28

Exhibit A

Statement of Issues No. 3771

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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 | Case No. 3771 |
| 12 Against: | |
| 13 BENJAMIN CARDENAS | STATEMENT OF ISSUES |
| 14 a.k.a. BEN MONIKER | |
| 15 13702 Flallon Avenue | |
| 16 Norwalk, CA 90650 | |
| 17 Respondent. | |

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about May 13, 2009, the Board of Pharmacy (Board) received an application
22 for Registration as a Pharmacy Technician from Benjamin Cardenas, also known as Ben Moniker
23 (Respondent). On or about October 3, 2008, Respondent certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on April 13, 2010.

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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 unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 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
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
11 action that a board is permitted to take following the establishment of a conviction may be
12 taken when the time for appeal has elapsed, or the judgment of conviction has been
13 affirmed on appeal, or when an order granting probation is made suspending the imposition
14 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
15 Penal Code.

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

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

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

23

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

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1 5. Section 490 states, in pertinent part:

2 “(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the licensee's license was issued.

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

16 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
17 subject to discipline, including suspension or revocation.

18 7. Section 4301 states, in pertinent part:

19 “The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

21 Unprofessional conduct shall include, but is not limited to, any of the following:

22

23 “(1) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.”

12
13 “(p) Actions or conduct that would have warranted denial of a license.”

14 **REGULATORY PROVISIONS**

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

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

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 *(Convictions of Crimes)*

24 9. Respondent’s application is subject to denial under section section 480, subdivision
25 (a)(1), in that Respondent was convicted of crimes as follows:

26 a. On or about August 4, 2009, after pleading nolo contendere, Respondent was
27 convicted of one misdemeanor count of violating Penal Code section 243, subdivision (e)(1)
28 [spousal battery] in the criminal proceeding entitled *The People of the State of California v.*

1 Benjamin Cardenas (Super. Ct., Los Angeles County, 2009, No. 9BF03698). The Court
2 sentenced Respondent to 20 days in Los Angeles County Jail, issued a protective order, and
3 placed him on 3 years probation, with terms and conditions. The circumstances surrounding the
4 conviction are that on or about August 2, 2009, Respondent was angry with the victim for not
5 coming home. When she arrived at the house, he pulled her out of her vehicle, punched her, and
6 kicked her.

7 b. On or about June 29, 2005, after pleading nolo contendere, Respondent was convicted
8 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
9 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*
10 *State of California v. Benjamin Cardenas* (Super. Ct., Los Angeles County, 2005, No.
11 5CM03850). The Court sentenced Respondent to 2 days in Los Angeles County Jail and placed
12 him on 36 months probation, with terms and conditions. On or about October 5, 2007,
13 Respondent violated the terms and conditions of his probation and was sentenced to 13 additional
14 days in Los Angeles County Jail. The circumstances surrounding the conviction are that on or
15 about April 29, 2005, Respondent drove a vehicle while under the influence of alcohol or drugs.

16 c. On or about May 17, 2005, after pleading nolo contendere, Respondent was convicted
17 of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving
18 without a valid driver's license] in the criminal proceeding entitled *The People of the State of*
19 *California v. Benjamin Cardenas* (Super. Ct., Los Angeles County, 2005, No. 5LC00432). The
20 Court placed Respondent on 1 year probation, with terms and conditions. The circumstances
21 surrounding the conviction are that on or about December 13, 2004, Respondent drove a vehicle
22 without a valid driver's license. He was arrested for a violation of Vehicle Code section 14601.5,
23 subdivision (a) [driving a vehicle while his driving privilege was suspended or revoked and with
24 knowledge].

25 d. On or about August 18, 2004, after pleading guilty, Respondent was convicted of
26 one misdemeanor count of violating Vehicle Code section 23103, subdivision (a) [reckless
27 driving] in the criminal proceeding entitled *The People of the State of California v. Benjamin*
28 *Cardenas* (Super. Ct., Los Angeles County, 2004, No. 4SB05855). The Court placed Respondent

1 on 24 months probation, with terms and conditions. The circumstances surrounding the
2 conviction are that on or about July 17, 2004, Respondent drove a upon a highway in willful
3 or wanton disregard for the safety of persons or property. He was arrested for violating Vehicle
4 Code section 23152, subdivision (a) [driving while under the influence of alcohol or drugs].
5 During the booking procedure, Respondent submitted to a breath test that resulted in a blood-
6 alcohol content level of 0.15% on the first reading and 0.16% on the second reading.

7 e. On or about June 7, 2002, after pleading nolo contendere, Respondent was convicted
8 of one misdemeanor count of violating Penal Code section 496, subdivision (a) [receiving known
9 stolen property] in the criminal proceeding entitled *The People of the State of California v.*
10 *Benjamin Cardenas* (Super. Ct., Los Angeles County, 2002, No. 2DW02936). The Court
11 sentenced Respondent to 30 days in Los Angeles County Jail and placed him on 36 months
12 probation, with terms and conditions. The circumstances surrounding the conviction are that on
13 or about June 5, 2002, Respondent received and withheld known stolen property, to wit: a
14 computer printer and software that had been stolen from Cesar Chavez School.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

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

17 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
18 that on or about June 5, 2002, Respondent committed dishonest acts, fraud, or deceit with the
19 intent to substantially benefit himself, or substantially injure another. Complainant refers to, and
20 by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (e), as
21 though set forth fully.

22 THIRD CAUSE FOR DENIAL OF APPLICATION

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

24 11. Respondent's application is subject to denial under section 480, subdivision (c), in
25 that on or about October 3, 2008, Respondent knowingly made a false statement of fact, by failing
26 to disclose his criminal history on his application for licensure. In addition, Respondent signed
27 under penalty of perjury, under the laws of the State of California that the foregoing was true and
28 correct on page one of his application for licensure. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) through (e),
2 inclusive, as though set forth fully.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 *(Acts Warranting Denial of Licensure)*

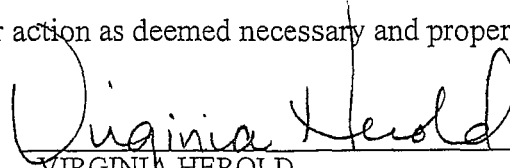
5 12. Respondent's application is subject to denial under sections 480, subdivision
6 (a)(3)(A), (a)(3)(B), and 4301, subdivision (p), in that Respondent committed acts which if done
7 by a licentiate of the business or profession would be grounds for suspension or revocation of his
8 license. Respondent was convicted of a crime substantially related to the qualifications,
9 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
10 or potential unfitness to perform the functions authorized by his license in a manner consistent
11 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in
12 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
13 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs
14 (a) through (e), inclusive, as though set forth fully.

15 **PRAYER**

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

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

20 DATED: 5/27/11

21 

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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