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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: **ULISES IVAN SANTAMARIA** **Pharmacy Technician Applicant** Respondent.	Case No. 3773 OAH No. 2011110805 **DEFAULT DECISION AND ORDER** [Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about June 23, 2011, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Statement of Issues No. 3773 against Ulises Ivan Santamaria (Respondent) before the Board.

2. On or about April 18, 2008, Respondent filed an application dated April 18, 2008, with the Board to obtain a Pharmacy Technician registration.

3. On or about April 1, 2010, the Board issued a letter denying Respondent's application for a Pharmacy Technician registration. On or about April 25, 2010, Respondent appealed the Board's denial of his application and requested a hearing.

4. On or about August 10, 2011, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 3773, Statement to

Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address on the application form, which was and is 38754 27th Street East, Palmdale, CA 93550. A copy of the Statement of Issues is attached as Exhibit A, and is incorporated herein by reference.

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

6. On or about May 15, 2010, Respondent appealed the denial of his application and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's address on the application and it informed him that an administrative hearing in this matter was scheduled for September 25, 2012. Respondent failed to appear at that hearing. A copy of the Notice of Continued Hearing is attached as Exhibit B, and is incorporated by reference.

7. Government Code section 11506 states, in pertinent part:

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

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing based upon the allegation set forth in the Statement of Issues, and Respondent's failure to establish entitlement to issuance of a license.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Ulises Ivan Santamaria has subjected his application for a Pharmacy Technician registration to denial.

2. Service of Statement of Issues No. 3773 and related documents was proper and in accordance with the law.

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

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

a. Violation of section 480 (a)(1) for convictions of substantially-related crimes and dangerous use of alcohol;

b. Violation of section 4300 (c) and (k) for convictions involving consumption of alcohol;

c. Violation of section 4300 (c) for illegally possessing a controlled substance;

d. Violation of section 480 (a)(2) for acts involving moral turpitude, dishonesty or corruption; and

e. Violation of section 4300 (c) for committing unprofessional conduct.

ORDER

IT IS SO ORDERED that the application of Respondent Ulises Ivan Santamaria is hereby denied.

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

This Decision shall become effective on February 18, 2014.

It is so ORDERED ON January 17, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

Attachment:

Exhibit A: Statement of Issues No. 3773

Exhibit A

Statement of Issues No. 3773

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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: **ULISES IVAN SANTAMARIA** 11702 Vanport Avenue Lake View Terrace, CA 91342 Pharmacy Technician Applicant Respondent.	Case No. 3773 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about April 18, 2008, the Board of Pharmacy (Board) received an application for Registration as a Pharmacy Technician from Ulises Ivan Santamaria (Respondent). On or about April 8, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on April 1, 2010. On or about June 15, 2010, the Board received a letter from Respondent, requesting a hearing to appeal the denial of his application.

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JURISDICTION

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

5. Section 492 states:

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

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

6. Section 4300, subdivision (c), states, in pertinent part:

"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. . . ."

7. 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:

. . . .

"(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.

. . . .

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

. . . .

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

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

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or

dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of 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.

. . . .

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

REGULATORY PROVISIONS

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

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant 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."

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CONTROLLED SUBSTANCES

9. "Methamphetamine", is a Schedule II controlled substance as designated by Health and Safety Code Section 11055, subdivision (d)(2) and is categorized as dangerous drug pursuant to Business and Professions Code Section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially-Related Crimes)

10. Respondent's application is subject to denial under sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician. The circumstances are as follows:

a. On or about March 26, 2008, after pleading *nolo contendere,* Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving a vehicle while having a 0.8% and more, by weight, of alcohol content in his blood], in the criminal proceeding entitled *The People of the State of California v. Ulises Ivan Santamaria* (Super. Ct. Los Angeles County, 2008, No. 8AV02726). Respondent was sentenced to 3 days in the Los Angeles County Jail, placed on probation for a period of 3 years, and fined. The circumstances surrounding the conviction are that on or about January 27, 2008, two California Highway Patrol Officers were dispatched to assist Los Angeles County Sheriff's Deputies with a possible Driving under the Influence investigation. The Deputies observed a parked vehicle behind a building on private property by itself with a man asleep in the driver's seat. The Deputies awoke the man and identified him to be the Respondent. Respondent was observed to be unsteady and confused as he stepped out of the vehicle. Respondent had signs and symptoms of alcohol intoxication, with the odor of alcohol emitting from his breath, and vomit on the driver's side seat, door, and floor. Respondent was given and explained the Field Sobriety Tests, and failed to perform the tests. Respondent submitted to a preliminary alcohol screening breath test device (PAS) that detected the presence of alcohol in his system, with two readings of 0.142% and 0.151%.

b. On or about May 6, 2005, after pleading *nolo contendere,* Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a) [driving a vehicle while having a suspended license], in the criminal proceeding entitled *The People of the State of California v. Ulises Ivan Santamaria* (Super. Ct. Los Angeles County, 2005, No. 5SF02431). Respondent was placed on probation for a period of 36 months, and fined. The circumstances surrounding the conviction are that on or about May 4, 2005, two Los Angeles Police Officers were on patrol and stopped Respondent during a routine traffic stop for making an unsafe left turn. Respondent was unable to show proof of driver's license and auto insurance. The Officer's conducted a Department of Motor Vehicle driver's license check which revealed that Respondent was driving on a suspended/revoked driver's license.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

11. Respondent's application is subject to denial under sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent was convicted of crimes that involved the usage of drugs and/or alcoholic beverages in a manner dangerous to himself and other persons, to an extent that the use impaired his ability to conduct with safety to the public the practice of a Pharmacy Technician License. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 10, subparagraphs a, and b, inclusive, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Convictions Involving the Consumption of Alcohol)

12. Respondent's application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (k), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of crimes that involved the usage of drugs and/or alcoholic beverages in a manner dangerous to himself and other persons. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 10, subparagraphs a, and b, inclusive, as though set forth fully.

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Violate Drug Laws)

13. Respondent's application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (j), in that Respondent committed acts of unprofessional conduct violating Health and Safety Code section 11550, when he illegally possessed the controlled substance methamphetamine as follows:

a. On or about April 1, 2003, after pleading *nolo contendere,* Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance] and placed on deferred entry of judgment for a period of 2 years in the criminal proceeding entitled *The People of the State of California v. Ulises Ivan Santamaria* (Super. Ct. Los Angeles County, 2003, No. GA052521). The circumstances surrounding the conviction are that on or about February 28, 2003, two Los Angeles Sheriff's Department Officers were on patrol and stopped Respondent during a routine traffic stop for having a broken front headlight. Respondent was observed to have rapid speech, sweat on his forehead, very anxious, and dilated eyes that had no reaction to light. During a search of Respondent's vehicle, the officer found an eye glass case in the driver side front door pocket containing a clear plastic baggie of methamphetamine.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Moral Turpitude, Dishonesty, Corruption, or Deceit)

14. Respondent's application is subject to denial under sections 480, subdivision (a)(2) and 4300, subdivision (c), and section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, corruption, or deceit. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10-13, inclusive, as though set forth fully.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

15. Respondent's application is subject to denial under sections 4300, subdivision (c), and section 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent

committed acts and was convicted of crimes that violated the pharmacy act. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10-14, inclusive, as though set fully.

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 Ulises Ivan Santamaria for Registration as a Pharmacy Technician; and

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

DATED: 6/23/11

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

LA2010600633