

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

In the Matter of the Statement of Issues Against:

Case No. 3955

ALFONSO LANDUZURI

OAH 2012070839

Pharmacy Technician Applicant

Respondent.

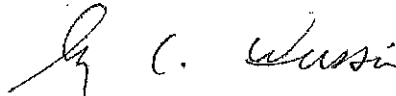
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 18, 2013.

It is so ORDERED on March 19, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Statement of Issues
Against:

ALFONSO LANDUZURI,

Respondent.

Case No. 3955

OAH No. 2012070839

PROPOSED DECISION

This matter came on regularly for hearing on January 8, 2013, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Bernardino, California.

Deputy Attorney General Shawn P. Cook represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Richard A. LePore, specially appearing, represented Alfonso Landuzuri (respondent) who was present throughout the proceedings.

Oral and documentary evidence was presented. The record remained open until January 23, 2013, for the submission of additional evidence at which time the record was closed and the matter was submitted.

On January 23, 2013, an additional document consisting of certified court records was submitted on behalf of respondent. The document was marked and received into evidence.

FACTUAL FINDINGS

1. On December 15, 2009, respondent signed an Applicant Affidavit (Affidavit) as part of his Application for Registration as a Pharmacy Technician (Application). By signing the Affidavit, respondent "certif[ied] under penalty of perjury under the laws of the State of California to the truth and accuracy of all statements, answers and representations made in this application"

Question No. 6 in the Application asked respondent if he had ever been "convicted of or pled no contest to a violation of any . . . state laws or local ordinances?" Question No. 6

advised respondent that "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."

In response to Question No. 6, respondent checked the box for "No."

2. Respondent's Application was received by the Board of Pharmacy (board) on or about December 16, 2009.

3. By letter dated April 12, 2010, the board notified respondent that it had learned that respondent was convicted of the crimes of forgery and being under the influence of controlled substances in 2008. The board advised respondent that it required further information about his convictions before it could complete its review of his Application. The information requested included a written explanation of the offenses, certified copies of arrest and conviction records, and proof of compliance with probation. Respondent was required to submit the requested information to the board by May 14, 2010.

4. In three letters dated May 18, 2010, respondent explained his convictions generally by stating that "unfortunately I met the wrong people made wrong choices." Respondent expressed remorse for his actions and asserted that he had changed since his arrest and convictions.

Specifically related to the charge of being under the influence of a controlled substance, respondent wrote that he was in his vehicle following a friend in another vehicle when his friend was pulled over by a police officer for a traffic stop. Respondent pulled off to the side of the road to wait for the person he was following. According to respondent, when a controlled substance, later determined to be methamphetamine, was found in his friend's vehicle, the police attempted to question respondent, but he refused to answer their questions. Respondent represented that, because he refused to answer the officer's questions, he was taken into custody for not cooperating with the police.

As related to the charge of forgery, respondent wrote that he had been laid off from his job and was looking for work, when he "came across an individual that needed help for landscaping." He claimed he was offered employment on a trial basis and was paid for his services and to purchase supplies with a check which he attempted to deposit into his account at Wells Fargo Bank. As he waited for the check to be deposited, he was approached by a San Bernardino Police Officer who advised him that the check he was attempting to deposit did not belong to the alleged issuer. Respondent asserted that he cooperated with the police and gave the officers information about the person for whom he had been working.

5. By letter dated June 29, 2010, the board advised respondent that his Application for registration as a pharmacy technician was denied based upon his criminal convictions.

6. On August 20, 2010, respondent appealed the board's decision to deny his Application.

7. On March 29, 2012, the Statement of Issues, Case No. 3955, was signed by Virginia Herold, in her official capacity as Executive Officer of the board. The Statement of Issues and other required jurisdictional documents were served upon respondent.

The Statement of Issues sought to uphold the denial of respondent's application for registration as a pharmacy technician based upon his two convictions in 2008 and his failure to disclose those convictions in his application.

8. On April 4, 2012, respondent submitted his Notice of Defense and this hearing was set.

9. Prior to the presentation of evidence, complainant's unopposed motion to amend paragraph 12 of the accusation in order to correct the year in which respondent sustained his convictions was granted.

2008 Conviction for Being Under the Influence of a Controlled Substance

10. On July 2, 2008, in the early morning hours, respondent was stopped by Colton police officers because the vehicle he was driving, and the vehicle he was following, ran a red light in violation of California Vehicle Code section 21453(a).¹ Respondent admitted he did not stop for the red light and explained that he did not stop because he was afraid he would lose the vehicle in front of him, which he was following.

The police officer who stopped respondent observed that respondent appeared nervous and was unable to sit still. Additionally, the officer observed that respondent's pupils were enlarged. The officer recognized these symptoms to be indicative of persons who are under the influence of controlled substances. The police officer asked respondent to step out of his vehicle and the officer administered several field sobriety tests. At the conclusion of the tests, the officer formed the opinion that respondent was under the influence of a controlled substance and placed respondent under arrest. In a search of his vehicle, conducted after respondent's arrest, the police officer found a glass pipe commonly used for smoking methamphetamine. A bag of methamphetamine was found in the vehicle respondent was following.

When questioned by the police officer at the scene, and later in the police station, respondent admitted that he had smoked methamphetamine one or two days earlier.

At the police station, after respondent's arrest, respondent's blood was drawn and sent to a laboratory for a drug test; the results were positive for amphetamines.

¹ The arresting and investigating officers' reports were received under *Lake v. Reed* (1997) 16 Cal. 4th 448 and the arresting officer in the forgery case testified at hearing.

11. On June 4, 2008, in the San Bernardino County Superior Court, in case number MSB706082, respondent pled guilty to one misdemeanor count of unlawfully using and being under the influence of the controlled substance methamphetamine in violation of Health and Safety Code section 11550, subdivision (a). In exchange for his plea, respondent was placed on two years of informal probation with certain terms and conditions, including that he pay fines and fees of approximately \$130.00 and serve 90 days in custody; custody was stayed pending successful completion of probation.

2008 Conviction for Forgery with Intent to Defraud a Person

12. In the afternoon of July 2, 2007, the same day as he was arrested for being under the influence of a controlled substance, respondent went to a Wells Fargo Bank and attempted to deposit a check for \$8000 into his account; the check was made out to respondent and purported to be written from the account of a husband and wife (CV and JV). The bank teller helping respondent took his identification and was conferring with her supervisor about the check when she noticed that respondent was gone. CV and JV were contacted and they confirmed that they had no knowledge of respondent and did not write a check to him in any amount.

The following day, July 3, 2007, respondent returned to the bank to recover his identification that he had given to the bank teller the previous day. The San Bernardo Police were alerted that respondent was in the bank, and he was arrested and charged with forgery. In a statement made to the police, respondent asserted that he left the bank the day before because his "friend" called him and told him to leave the bank, so he did. Respondent admitted that he did not know CV or JV, the supposed issuers of the \$8000 check respondent had attempted to deposit. Respondent told police that he received the \$8000 check from a "friend" in payment for a remodeling job that he had yet to perform. Respondent's "friend" was reported to have told respondent that the check was "good" and he could deposit it into his account. When police challenged respondent's explanation, he changed his story and told them that his "friend" obtained the check from the account holders and asked respondent to deposit the check into his account so that they could withdraw \$1000 to buy drugs. Respondent claimed that a bank manager in another branch told him that he could not get into trouble by depositing a check because deposited checks were held for three days until the check writer's account was verified. Respondent believed he did nothing wrong and told police he would cooperate with them.

Printed on the check respondent attempted to deposit was the sentence, "Must post to your account by July 31, 2007 to get your promotional APR." This language suggested the check was of the type sent by credit card companies to account holders to enable them to receive cash advances that are charged to their credit card. The arresting officer, Officer Jesus Martinez, testified at hearing that one of the victims told him that mail had been stolen from their house and that strangers were seen going through their trash the week prior to respondent's attempt to deposit the \$8000 check purported to have been signed by her.

13. On July 2, 2008, in the San Bernardino County Superior Court, in case number FSB704053, respondent pled guilty to, and was convicted of, one felony count of passing a forged check in violation of Penal Code section 475, subdivision (c). In exchange for his plea, two remaining felony counts were dismissed and respondent was placed on three years of formal probation with certain terms and conditions, including that he serve 3 days in custody with credit for 3 days served, and pay fines and fees of approximately \$3649.00. Probation was scheduled to terminate in July of 2011.

14. On August 19, 2010, respondent's motion for dismissal under Penal Code section 1203.4 was granted; the count against him was reduced to a misdemeanor, his plea of guilty was withdrawn and set aside, a plea of not guilty was entered, he was discharged from probation, and the case was dismissed.

Testimony of Board Representative

15. Board representative Joan Coyne (Coyne) testified at hearing. Coyne is a supervising inspector for the California Board of Pharmacy; she has been licensed as a pharmacist since 1982 and has extensive experience relating to the duties, functions, and responsibilities of pharmacy technicians and with the diversion of controlled substances by pharmacy employees.

Coyne testified that the primary character trait required in a pharmacy technician is to operate with complete honesty. Pharmacy technicians are permitted to perform all non-discretionary tasks assigned by a pharmacist and may have unlimited access to controlled substances. Coyne testified that respondent's false statement on his Application, and his failure to disclose his convictions, indicate that he is not honest or trustworthy.

Evidence in Mitigation and of Rehabilitation

16. Respondent did not dispute Officer Martinez' testimony at hearing or the information contained in the police reports, except that he denied telling Officer Martinez that he was trying to get money for drugs.

With respect to his conviction for forgery, respondent continued to maintain that he did nothing wrong. As purported evidence of his innocence, respondent stated that he fell asleep waiting for the return of his identification, woke up when he was arrested, and immediately agreed to cooperate with police to find the persons who were at fault. Respondent continued to advance his claim that the check given to him was prospective payment for work he was to perform by persons he did not know and could not identify.

17. With respect to his conviction for being under the influence of a controlled substance, respondent continued to assert, as he did in his letter of explanation, that he did nothing wrong. He denied running a red light and, while he admitted a glass pipe was found in his car, he argued that he did not use it. Respondent did admit to recreational use of methamphetamine from 2006 to 2008, "depending upon if [he] had the money." He

challenged the police officer's finding that he was under the influence of methamphetamine, as he claimed, contrary to his statement at the time, that he had last smoked methamphetamine one week before being stopped. He had no recollection of having given blood for a drug test.

Respondent testified that he changed his life after his 2008 convictions. He stated that he was no longer friends with the people he was friends with then and that he no longer engaged in the activities he used to engage in. Respondent stated that he attended and successfully completed a four month rehabilitation program in Fontana, however, he could not recall the name of the program and he failed to submit documentation of his attendance in, or completion of, the program. Respondent asserted that he has been clean and sober since late 2007 or early 2008, but he could not provide a specific date of sobriety. Respondent stated that he was a different person than he was in 2008, and that he was committed to staying out of trouble with the law so that he could provide a better life for his family. No evidence was presented that respondent engaged in illegal conduct after his 2008 convictions.

18. Respondent asserted that when the motion to dismiss his forgery conviction was granted, his lawyer and "the judge" told him that he did not have to disclose the conviction on employment applications, so he did not disclose it on his Application to the board. The judge is reported to have told respondent that he paid his debt to society and advised respondent to enjoy the second chance that he had been given. Nonetheless, assuming *arguendo* that respondent was advised that he did not have to list his conviction on an employment application, the plain language of the Application for registration clearly stated that all convictions, even if dismissed pursuant to Penal Code section 1203.4, must be disclosed. More importantly, only one of respondent's convictions was dismissed, and that dismissal was granted eight months after respondent filed his Application with the board.

Additionally, respondent testified that it was the school, not him, that filled out the Application to the board. He asserted that he signed a blank Application expecting that the school would complete it and file it with the board. Since he had advised the school of his convictions, he believed they would correctly complete the Application for him. Respondent stated that he trusted the teachers who told him that he did not need to read the Application because they would not do anything to harm him.

19. Respondent also stated that he advised his pharmacy employer about his prior convictions. He asserted that when he worked for the pharmacy, he was an excellent and trustworthy employee, and that his employer did not hesitate to leave him alone with sensitive documents or rely upon him to correctly perform his job responsibilities. Respondent claimed that his pharmacy employer was required to terminate him because of the board's actions, and that the employer cried when he had to relieve respondent of his duties because respondent was such a valued employee. Respondent did not submit any letters of references from his employers and none testified at hearing.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. Business and Professions Code section 480 provides:

(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.

(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.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

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

2. Business and Professions Code section 482 requires the board to “develop criteria to evaluation the rehabilitation of a person when (a) considering the denial of a license” under section 480. Section 482 also requires the board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

3. Business and Professions Code section 493 provides, in part:

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.

4. Business and Professions Code section 4300, subdivision (c) provides:

(c) 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.

5. Business and professions Code section 4301 defines unprofessional conduct to include:

¶ . . . ¶

(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.

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

(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

¶ . . . ¶

(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 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. . . .

¶ . . . ¶

(p) Actions or conduct that would have warranted denial of a license.

6. California Code of Regulations, title 16, section 1769, subdivision (b) provides:

(b) When considering the suspension or revocation of a . . . personal license on the ground that the licensee has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

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.

Evaluation

8. Cause exists to deny respondent's Application for Registration as a Pharmacy Technician pursuant to Business and Professions Code section 480, subdivision (a), subsection (1), because he was convicted of the misdemeanor offense of being under the influence of methamphetamine and the felony offense of attempting to pass a forged document with the intent to defraud a person.

Pharmacy Technicians occupy positions that require trustworthiness, honesty, clear-headedness and the exercise of impeccable judgment, particularly as a technician has access to confidential personal and financial information of consumers and to highly regulated medications. The absence of these essential characteristics can result in a significant threat to the public health, safety and welfare. The entirety of the circumstances surrounding the commission of the crimes for which respondent was convicted show that the convictions are substantially related to the qualifications, functions and duties of a Pharmacy Technician. (Cal. Code Regs., tit. 16, § 1770.)

9. Cause exists to deny respondent's Application for Registration as a Pharmacy Technician pursuant to Business and Professions Code section 480, subdivision (a), subsection (2), because he was convicted of the felony offense of attempting to pass a forged document with the intent to defraud a person which is an act of dishonesty, fraud and/or deceit and which was intended to confer a substantial financial benefit upon himself while substantially injuring another. Respondent's testimony regarding how he obtained the forged check and his intent regarding it is found to be untrustworthy. Additionally, respondent's untruthful and misleading statements made throughout the application process and in this hearing, including continued assertions that he was excused from disclosing his convictions because one of them was dismissed eight months after he signed the Application, constitute acts of dishonesty intended to confer upon respondent the benefit of obtaining a registration as a Pharmacy Technician.

10. Cause exists to deny respondent's Application for Registration as a Pharmacy Technician pursuant to Business and Professions Code section 480 subdivision (c), because he made a false statement of material fact in the application for registration when he denied having sustained any convictions. Additionally, respondent's letters of explanation submitted as part of the Application process contain false information intended to deceive and/or mislead the board as to the true nature of his convictions.

11. Cause exists to deny respondent's Application for Registration as a Pharmacy Technician pursuant to Business and Professions Code section 480, subdivision (a), subsection (3), subparts (A) and (B), and section 4301, subdivision (p), subsection (3), because the circumstances surrounding the commission of the crimes for which respondent was convicted, his false and misleading statements made in the application process, as repeated and exacerbated in this hearing, constitute acts which if done by a licensee would be grounds for suspension or revocation of a license.

12. Respondent failed to present persuasive evidence of rehabilitation. The bureau's decision to deny respondent's application was based upon respondent's criminal convictions and his failure to disclose those convictions in his Application for registration. Respondent was not candid or forthcoming in his explanation of his two convictions when requested by the board to provide details of the circumstances of the convictions; instead respondent denied responsibility and attempted to mislead the board. As relates to his failure to disclose the convictions on his Application, respondent again failed to accept


responsibility for his actions, professed innocence, and blamed others. Similarly, respondent's testimony at the hearing on this matter was not trustworthy or believable.

13. Respondent appeared sincere in his resolve to remain out of the criminal justice system and to provide a stable life for himself and his family. However, respondent failed to provide persuasive evidence of rehabilitation, his testimony was not believable, and insufficient time has elapsed to determine whether respondent will revert to his prior conduct. On the basis of this record, no other conclusion can be drawn but that respondent has failed to demonstrate sustained rehabilitative conduct over an extended period of time to warrant issuance of a Pharmacy Technician Registration, even on a probationary basis.

ORDER

The application of Alfonso Landuzuri for Registration as a Pharmacy Technician is denied. The board's decision to deny that application is affirmed.

DATED: February 21, 2013


SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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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. 3955

12 **ALFONSO LANDUZURI**
13 7641 Emerald Avenue
14 Fontana, CA 92336

STATEMENT OF ISSUES

15 Respondent.

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 December 16, 2009, the Board of Pharmacy (Board) received an
21 application for registration as a Pharmacy Technician from Alfonso Landuzuri (Respondent). On
22 or about December 15, 2009, Respondent certified under penalty of perjury to the truthfulness of
23 all statements, answers, and representations in the application. The Board denied the application
24 on June 29, 2010.

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.

1 **STATUTORY PROVISIONS**

2 4. Section 480 states, in pertinent part:

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

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

11 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
12 benefit himself or herself or another, or substantially injure another.

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

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

18

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

22 5. Section 490 states, in pertinent part:

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

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
10 subject to discipline, including suspension or revocation."

11 7. Section 4301 states, in pertinent part:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
14 Unprofessional conduct shall include, but is not limited to, any of the following:

15

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

19

20 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
21 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
22 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
23 to the extent that the use impairs the ability of the person to conduct with safety to the public the
24 practice authorized by the license.

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

27

28 ///

1 "(l) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

18

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

23 "(p) Actions or conduct that would have warranted denial of a license."

24 **REGULATORY PROVISIONS**

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

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

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 9. **CONTROLLED SUBSTANCE**

5 "Amphetamine," is a Schedule II controlled substance as designated by Health and Safety
6 Code section 11055, subdivision (d)(1) and is categorized as a dangerous drug pursuant to
7 section 4022.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(Convictions of Crimes)**

10 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
11 that Respondent was convicted of crimes as follows:

12 a. On or about June 04, 2008, after pleading guilty, Respondent was convicted of one
13 felony count of violating Penal Code section 475, subdivision (c) [forgery] in the criminal
14 proceeding entitled *The State of California v. Alfonso Landazuri* (Super.Ct. San Bernardino
15 County, 2008, No. FSB704053). The Court sentenced Respondent to serve 3 days in San
16 Bernardino County jail and placed him on 36 months probation, with terms and conditions. The
17 circumstances surrounding the conviction are that on or about July 3, 2007, Respondent possessed
18 a completed check, money order, traveler's check, warrant and county order, with the intent to
19 utter and pass and facilitate the utterance and a passage of the same, in order to defraud a person.

20 b. On or about June 4, 2008, after pleading guilty, Respondent was convicted of one
21 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
22 influence of a controlled substance] in the criminal proceeding entitled *The State of California v.*
23 *Alfonso Landazuri* (Super.Ct. San Bernardino County, 2008, No. MSB706082). The Court
24 sentenced Respondent to serve 90 days in San Bernardino County jail, ordered pronouncement of
25 judgment withheld, and condition and revocable release granted for a period of 24 months, with
26 terms and conditions. The circumstances surrounding the conviction are that on or about July 2,
27 2007, Respondent was found to be under the influence of a controlled substance, to wit,
28 Amphetamine.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that Respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Knowingly Made a False Statement of Fact)

12. Respondent's application is subject to denial under sections 480, subdivision (c), in that on or about December 15, 2009, Respondent knowingly made a false statement of fact by failing to disclose two convictions in 1998, on his application for licensure. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the foregoing was true and correct, on his application for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 10, subparagraphs (a) and (b), inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

13. Respondent's application is subject to denial under sections 4301, subdivision (p), and 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate would be grounds for suspension or revocation of his license, as follows:

- a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770. 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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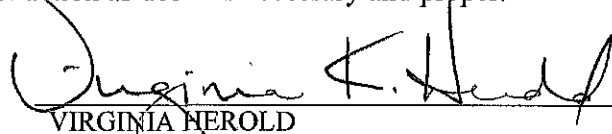
1 b. On or about July 2, 2007, Respondent was found to be under the influence of a
2 controlled substance, to wit: Amphetamine, in violation of section 4301, subdivisions (h) and (j).
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraph 10, subparagraph (b), as though set forth fully.

5 PRAYER

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

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

11 DATED: 3/19/12



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

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