

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

In the Matter of the Statement of Issues Against:

Case No. 4044

**HUGO ALBERTO MONTANO**

OAH No. 2013120343

Pharmacy Technician Registration Applicant

Respondent.

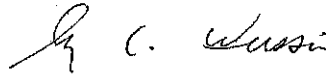
**DECISION AND ORDER**

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 September 4, 2014.

It is so ORDERED on August 5, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STAN C. WEISSER  
Board President

BEFORE THE BOARD OF PHARMACY  
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In the Matter of the Statement of Issues  
Against:

HUGO ALBERTO MONTANO

Respondent.

Case No. 4044

OAH No. 2013120343

**PROPOSED DECISION**

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on June 23, 2014, in Los Angeles, California.

Terrence M. Mason, Deputy Attorney General, represented Complainant.

Respondent was present and represented himself.

Evidence was received, and the matter was submitted for decision, on June 23, 2014.

**REDACTION OF PERSONAL IDENTIFYING INFORMATION**

During and after the hearing, it was discovered that Exhibits 2 and 4 contained unredacted personal identifying numbers. These references were redacted from the Office of Administrative Hearings' file.

**FACTUAL FINDINGS**

1. Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed the Statement of Issues in her official capacity.
2. On March 24, 2010, Respondent applied (Application) to the Board for registration as a pharmacy technician. He had signed the Application under penalty of perjury approximately seven months earlier, on August 3, 2009. Application question

number 6 asked if Respondent had ever been convicted of, or pled no contest to, any crime, including “all misdemeanor and felony convictions[.]”<sup>1</sup> (Exhibit 4.) Respondent checked the “No” box in response to question 6.

3. When Respondent completed the Application, his answer to question 6 was misleading. On May 26, 2009, in the Superior Court of California, County of Los Angeles, case number PA064565, Respondent pled guilty to a charge of violating Health and Safety Code section 11350, subdivision (a) (possession of controlled substance: methamphetamine), a felony. The court placed Respondent in a 36-month deferred entry of judgment program, and ordered him to obey all laws, complete a drug education program, and pay fines and fees. Respondent completed the deferred entry of judgment program early, and on November 30, 2010, the court terminated the program, set aside Respondent’s plea, and dismissed the matter pursuant to Penal Code section 1000.3.

4. At the administrative hearing, Respondent acknowledged that his Application dated from before the dismissal of his criminal case, but explained that he did not think it was “really a major conviction” (Respondent’s testimony), and consequently did not realize he was required to disclose it. This explanation was not credible, considering that Respondent had pled guilty less than three months earlier to a felony charge—the most serious degree of criminal charge possible. It is simply not believable that Respondent would think such a charge not serious enough to report, particularly in light of the wording of question 6.

5. (a) Respondent’s criminal case arose from an April 16, 2009 altercation at a bar where Respondent, then age 22, and a few friends were celebrating a birthday. Police questioned and searched Respondent and others. In Respondent’s pocket, the officers found a small folded piece of paper containing methamphetamine. At the scene and again at the administrative hearing, Respondent denied knowing the paper contained methamphetamine. When Respondent and his friends arrived at the bar, the friends handed Respondent their keys and personal belongings, so that they could free their hands to carry other items (e.g., birthday gifts) inside. According to Respondent, the folded paper happened to be among the items handed to him, and he put it into his own pocket without questioning its contents. Respondent denied knowing that any of the friends he was with used or possessed methamphetamine.

(b) Respondent’s version of the incident leading to his conviction was, again, not credible. It is highly improbable that Respondent would be wholly unaware of his friend’s drug possession, if, as Respondent claims, the two were on such close terms that the friend would entrust Respondent with his drugs so casually and matter-of-factly. And if Respondent were aware his friend was carrying drugs, then Respondent would probably also have been aware when the friend handed the drugs to him. Furthermore, someone in possession of illegal drugs would probably not entrust them to another person who was

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<sup>1</sup> Question 6 did not expressly request information about guilty pleas, but the term “convictions” encompasses guilty pleas. (Bus. & Prof. Code § 4301, subd. (I).)

unaware of what they were—for several reasons, including the possibility that the ignorant person might lose the drugs, throw or give them away without realizing their value, or report the entrustor's drug possession to authorities. In short, it was not believable that Respondent was merely the blameless victim of his friend's carelessness.

6. (a) Respondent characterized himself as a "teenager" (Respondent's testimony) when the incident occurred, and explained that he has matured in the intervening years. He is now 27 years old and a father of three. His children's ages are seven years, two years, and three months. Respondent's two younger children live with him, and he shares custody of the older child with her mother. Respondent provides for his children financially, and would like to have a career that will not only generate sufficient income, but also be something his family can be proud of. Respondent labeled his crime a "mistake" (*id.*), and feels he has a different mentality now. He believes his criminal case, the drug education program, and especially parenthood have all helped him become more responsible, so that he no longer focuses entirely on having fun and going out with his friends.

(b) Respondent's testimony regarding his desire to provide for his children, and his love for them, appeared very heartfelt. Nevertheless, his other statements were dubious. Respondent was not a teenager when he committed the crime. He was 22 years old. Moreover, he was already a parent at the time: his oldest child was then approximately two years old. Respondent did not explain why parenthood did not have its positive effect on him until sometime later. Finally, Respondent showed no insight into what "mistake" he made in connection with the crime. If it were true, as Respondent claimed, that he did nothing more than accept a few items to carry for his friends, then he would have had no lesson to learn from the experience—other than perhaps to be wary of doing such favors. Yet Respondent purported to be contrite and sorry for his actions, even as he maintained his actions were entirely innocent. This inconsistency further undermined Respondent's credibility.

7. Respondent has had no other criminal convictions. He "no longer" (Respondent's testimony) uses illegal drugs, and does not stay in touch with the friends who were involved in the criminal incident with him. Respondent is currently unemployed, having been recently laid off from his employment as a truck driver. Respondent taught himself how to drive commercial trucks, and even had his own trucking business for a time. While Respondent was undergoing pharmacy technician training, he had the opportunity to work as a pharmacy technician extern, and he felt the job "brought out the best in [him]" and made him "more responsible and happier" (*id.*); Respondent "liked who [he] was when [he] was a pharmacy technician." (*Id.*)

## LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's Application based on his unprofessional conduct: namely, his possession of a controlled substance, which is substantially related to the qualifications, functions, and duties of a pharmacy technician, and which would have

been grounds for discipline if Respondent were licensed. (Factual Findings 3 and 5.) (Bus. & Prof. Code §§ 480, subds. (a)(3)(A) and (a)(3)(B); 4301, subds. (j), (o), and (p); Cal. Code Regs., tit. 16 (Regulation) § 1770.)

2. Respondent's unprofessional conduct was serious, particularly considering it involved controlled substances, the proper handling of which is central to the work of a pharmacy technician. (Factual Findings 3 – 5.) (Regulation §§ 1769, subd. (b)(1); 1760; Disciplinary Guidelines (Rev. 10/2007) (Guidelines) at p. 3, (1), (5), and (13).) Respondent's conduct was aggravated by the fact that he did not disclose his conviction on his Application. (Factual Findings 2 – 4.) (Regulation § 1769, subd. (b)(2); Guidelines at p. 3, (6).) Although Respondent's conviction was *subsequently* dismissed, at the time of Respondent's Application, the conviction was extant, and Respondent's failure to disclose it was misleading and dishonest.<sup>2</sup> (Factual Findings 2 – 4.) (Regulation § 1769, subd. (b)(2); Guidelines at p. 3, (6).) Moreover, Respondent's hearing testimony, especially with regard to the conduct that led to the conviction—and his reason for not disclosing it—was not credible, and must also be characterized as evasive or misleading. (Factual Findings 2 – 6.) (Regulation § 1769, subd. (b)(2); Guidelines at p. 3, (6).)

3. On the other hand, Respondent's unprofessional conduct occurred approximately five years ago, and he has no other criminal record. (Factual Findings 5 and 7.) (Regulation § 1769, subd. (b)(3); Guidelines at p. 3, (10) and (12).) Respondent is to be commended for his prompt and complete compliance with the terms of his deferred entry of judgment program (Factual Finding 3) (Regulation § 1769, subd. (b)(4); Guidelines at p. 3, (9)), his assiduousness in finding an alternative career in truck driving (Factual Finding 7) (Regulation § 1769, subd. (b)(5); Guidelines at p. 3, (8)), his development into a caring father and provider for his children (Factual Finding 6) (Regulation § 1769, subd. (b)(5); Guidelines at p. 3, (8)), and his desire for a career that he and his family can be proud of (Factual Findings 6 and 7). All of these things demonstrate progress on Respondent's part, and deserve recognition. Nevertheless, they do not overcome Respondent's refusal to accept responsibility for his unprofessional conduct—indeed, his continuing efforts to evade responsibility for it. (Guidelines at p. 3, (6). (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 (fully acknowledging wrongdoing “is an essential step towards rehabilitation”).) Given the serious shortcomings in Respondent's showing, he cannot be licensed at this time without creating an undue risk to the public. More time is needed to determine whether he will continue on the path of rehabilitation and fully embrace responsibility for his past behavior.

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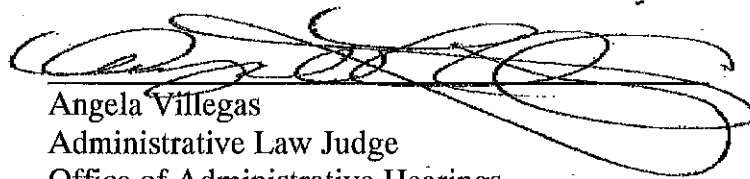
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<sup>2</sup> The question of Respondent's obligation to disclose the conviction after it was dismissed pursuant to Penal Code section 1000.3 is not presented, and no opinion is expressed.

ORDER

The application of Hugo Alberto Montano for registration as a pharmacy technician is denied.

Dated: July 1, 2014

A handwritten signature in black ink, appearing to read 'Angela Villegas', is written over a horizontal line. The signature is highly stylized and cursive.

Angela Villegas  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 TERRENCE M. MASON  
Deputy Attorney General  
4 State Bar No. 158935  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6294  
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  
Against:  
12 **HUGO ALBERTO MONTANO**  
13 10644 Laurel Canyon  
Pacoima, CA 91331  
14 Respondent.

Case No. 4044

**STATEMENT OF ISSUES**

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 March 24, 2010, the Board of Pharmacy (Board) received an application  
21 for Pharmacy Technician Registration from Hugo Alberto Montano (Respondent). On or about  
22 August 3, 2009, Respondent certified under penalty of perjury to the truthfulness of all  
23 statements, answers, and representations in the application. The Board denied the application on  
24 October 18, 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           4.    Section 480 states, in pertinent part:

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

4           .....

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

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

10          5.    Section 492 states, in pertinent part:

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

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

23          7.    Section 4301 states, in pertinent part:

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

27          .....

28          ///



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

3           ....

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

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

9           8.    CONTROLLED SUBSTANCE

10           "Methamphetamine," is a Schedule II controlled substance as designated by Health and  
11 Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to  
12 section 4022.

13                                   CAUSE FOR DENIAL OF APPLICATION

14                                   (Acts Warranting Denial of Licensure)

15           9.    Respondent's application is subject to denial under sections 4301, subdivision (p) and  
16 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a  
17 licentiate of the business and profession, would be grounds for suspension or revocation of his  
18 license as follows:

19           a.    On or about April 16, 2009, during an investigation of an assault at a bar, Los  
20 Angeles Police contacted Respondent. During a consent search of Respondent's person, an  
21 officer recovered a small folded up paper from Respondent's pocket containing  
22 methamphetamine. Respondent was subsequently arrested for violating Health and Safety section  
23 11377, subdivision (a) [possession of a controlled substance].

24           b.    Respondent was found to be in possession of a controlled substance, to wit:  
25 Methamphetamine, in violation of section 4301, subdivisions (j) and (o).


26                                   PRAYER

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

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

DATED: 7/22/13

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

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