

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

In the Matter of the Statement of Issues  
Against:

**JEMMA DEBRA MOLE**  
36202 Corsica Circle  
Winchester, CA 92596

Applicant

Respondent.

Case No. 4045

OAH No. 2011100186

**DECISION AND ORDER**

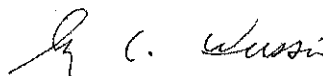
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 15, 2012.

It is so ORDERED on September 14, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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No. 4045

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**PROPOSED DECISION**

On July 17, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Adrian R. Contreras, Deputy Attorney General, represented the complainant.

Respondent did not appear at the hearing although she was properly served with the Notice of Hearing. The matter proceeded as a default pursuant to Government Code 11520.

The matter was submitted on July 17, 2012.

**FACTUAL FINDINGS**

1. On August 22, 2011, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereafter, "Board") filed Statement of Issues No. 4045 in her official capacity. Respondent filed a timely Request for Hearing.

2. On January 7, 2010, respondent signed an Application for Registration as a Pharmacy Technician and submitted it to the Board.

3. On July 28, 2006, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a) [driving under the influence of alcohol], 23152, subdivision (b) [driving with a blood alcohol content of 0.08 percent or more], and 23140 [driving while under the age of 21 years with a blood alcohol content of 0.05 percent or more], all misdemeanors. The court placed respondent on probation for three years on condition, among others, she serve six days in county jail with

credit for time served of one day, suspended if respondent attended the T.E.M.P.O program, pay fines and fees in excess of \$1500.00, and attend and complete a First Offender DUI program for four months. On November 12, 2009, the court terminated probation early.

Respondent committed the offense on May 28, 2006.

4. On January 9, 2008, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Penal Code section 647, subdivision (f), public intoxication, a misdemeanor. The court placed respondent on probation for 18 months on condition, among others, she pay fines and fees of \$167.40 and restricted her driver's license for 12 months.

Respondent committed the offense on November 17, 2007. According to the police report, a deputy sheriff was in the process of arresting a person at the Pechanga Resort and Casino when respondent, one of the arrestee's friends, started yelling obscenities at him, casino staff, and patrons. He observed respondent trip and fall and when he approached her, he detected numerous symptoms of alcohol intoxication. Respondent said she was 20 years old and on probation for DUI. Respondent was unable to recall her home address or social security number. The deputy issued her a citation.

5. On May 21, 2009, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code section 23152, subdivision (b) [driving with a blood alcohol content of 0.08 percent or more], a misdemeanor. The court placed respondent on probation for four years and ordered her to serve 10 days in custody, with credit for time served of one day. The court also ordered her to pay fines and fees in excess of \$2,000.00 and attend and complete a drinking driver program.

Respondent committed the offense on February 11, 2009. According to the police report, a deputy sheriff responded to a traffic collision in a field in San Jacinto at about 1:30 a.m. He observed respondent leaning against a car. Respondent said she was the driver of the car and was not injured. She said she thought the field was a shortcut to get to her friend's house. As he talked to her, the deputy detected the odor of alcohol emitting from her breath, and noticed her speech was slow and her eyes were red and watery. He began to question her and she said she already had a DUI and a drunk in public, and asked the deputy not to arrest her. She said she had one drink of Jack Daniels the previous afternoon and had been taking a prescription medication. The deputy administered a series of field sobriety tests and based upon all the evidence, concluded respondent had been driving under the influence of alcohol. He administered two breath tests which revealed her blood alcohol content was 0.218 percent and 0.231 percent. He took her to the police station where she told the deputy that she was going to get off because "Judges like pretty girls." She also said this would not stop her from drinking and driving.

6. The offenses for which respondent was convicted are substantially related to the qualifications, duties, and functions of a pharmacy technician.

7. On March 25, 2010, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code section 12500, subdivision (a), driving without a valid driver's license, a misdemeanor. The court ordered respondent to pay a fine of \$85.00, which she paid.

On July 26, 2010, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code sections 14601.1, subdivision (a) [driving with knowledge that her license was suspended, a misdemeanor], 26710 [driving with a defective windshield or rear window, an infraction], and 4000, subdivision (a)(1) [driving without current registration, an infraction]. The court fined respondent \$1,151.00 plus additional fees and placed her on summary probation for three years.

8. Respondent submitted several letters in support of her application.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in 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 which 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.

[¶] . . .

(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.

2. Business and Professions Code section 4300 provides in part:

“(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..."

3. Business and Professions Code section 4301 provides in 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:

[¶] . . .

(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.

[¶] . . .

(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 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. . ."

4. Cause to deny respondent's application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (1), and 480, subdivision (a), was established by Findings 3 through 6 in that respondent was convicted of crimes that are substantially related to the qualifications, function, and duties of a pharmacy technician.

5. Title 16, California Code of Regulations, section 1769 provides in part:

“(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

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

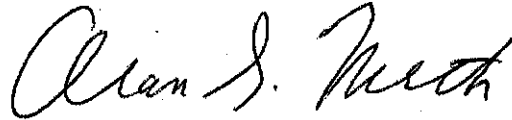
(5) Evidence, if any, of rehabilitation submitted by the applicant.”

The evidence in light of these criteria shows that respondent was convicted of three alcohol-related offenses within a three-year period and she remains on probation. Since her last conviction, she was convicted of other driving offenses. It is apparent respondent has little respect for the laws governing appropriate behavior relating to alcohol and driving, and her alcohol abuse and lack of respect for the law make her a substantial risk to the public if she were licensed as a pharmacy technician. Respondent presented no evidence of rehabilitation or any reason why a license should be issued to her. The only appropriate disposition of his matter is denial of her application.

ORDER

The application of respondent Jemma Debra Mole for a pharmacy technician license is denied.

DATED: July 18, 2012

A handwritten signature in cursive script that reads "Alan S. Meth".

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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues  
13 Against:

Case No. 4045

14 **JEMMA DEBRA MOLE**  
15 **36202 Corsica Circle**  
**Winchester, CA 92596**

**STATEMENT OF ISSUES**

16  
17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 14, 2010, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Jemma Debra Mole  
24 (Respondent). On or about January 7, 2010, Jemma Debra Mole certified under penalty of  
25 perjury to the truthfulness of all statements, answers, and representations in the application. The  
26 Board denied the application on December 20, 2010.

27 ///

28 ///



1 JURISDICTION

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code states:

6 "....

7 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
8 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
9 guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

10 STATUTORY PROVISIONS

11 5. Section 475 of the Code states:

12 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
13 govern the denial of licenses on the grounds of:

14 "....

15 "(2) Conviction of a crime.

16 "....

17 "(4) Commission of any act which, if done by a licentiate of the business or profession in  
18 question, would be grounds for suspension or revocation of license.

19 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall  
20 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)  
21 of subdivision (a) .

22 "...."

23 6. Section 480 of the Business and Professions Code provides, in pertinent part, that a  
24 board may deny a license if the applicant has been convicted of a crime substantially related to  
25 the qualifications, functions or duties of the business or profession for which application is made,  
26 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done  
27 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made  
28 a false statement of fact required to be revealed in the application.

1           7.    Section 482 of the Code states:

2           "Each board under the provisions of this code shall develop criteria to evaluate the  
3 rehabilitation of a person when:

4                   "(a) Considering the denial of a license by the board under Section 480; or

5                   "(b) Considering suspension or revocation of a license under Section 490.

6           "Each board shall take into account all competent evidence of rehabilitation furnished by  
7 the applicant or licensee."

8           8.    Section 493 of the Code states:

9           "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
10 the department pursuant to law to deny an application for a license or to suspend or revoke a  
11 license or otherwise take disciplinary action against a person who holds a license, upon the  
12 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
15 and the board may inquire into the circumstances surrounding the commission of the crime in  
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
17 qualifications, functions, and duties of the licensee in question.

18           "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
19 'registration.'"

20           9.    Section 4301 of the Code states:

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

24                   ". . .

25                   "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
28

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 "....

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

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

24 "...."

25 ///

26 ///

27 ///

28 ///

1 REGULATORY PROVISIONS

2 10. California Code of Regulations, title 16, section 1769, states:

3 "(a) When considering the denial of a facility or personal license under Section 480 of the  
4 Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his  
5 present eligibility for licensing or registration, will consider the following criteria:

6 "(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for  
7 denial.

8 "(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
9 consideration as grounds for denial under Section 480 of the Business and Professions Code.

10 "(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in  
11 subdivision (1) or (2).

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

14 "(5) Evidence, if any, of rehabilitation submitted by the applicant.

15 "...."

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

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

23 FIRST CAUSE FOR DENIAL OF APPLICATION

24 (July 28, 2006 Criminal Convictions for DUI on May 28, 2006)

25 12. Respondent's application is subject to denial under section 480, subdivisions (a)(1)  
26 and (a)(3)(A), and section 4301, subdivision (f) of the Code in that she was convicted of a crime  
27 substantially related to the qualifications, functions, and duties of a licensee. The circumstances  
28 are as follows:



1 Respondent back up, trip, and fall to the ground near the parking structure. The officer walked to  
2 Respondent and asked her for her identification. Respondent said she was 20 years old and was  
3 on probation for a DUI. Respondent could not remember her home address or social security  
4 number. She was then arrested.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(May 21, 2009 Criminal Conviction for DUI on February 11, 2009)**

7 19. Respondent's application is subject to denial under section 480, subdivisions (a)(1)  
8 and (a)(3)(A), and section 4301, subdivision (l) of the Code in that she was convicted of a crime  
9 substantially related to the qualifications, functions, and duties of a licensee. The circumstances  
10 are as follows:

11 20. On or about May 21, 2009, in a criminal proceeding entitled *People v. Jemma Debra*  
12 *Amanda Mole*, in Riverside County Superior Court, case number SWM084665, Respondent was  
13 convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving  
14 with a BAC of .08% or more, a misdemeanor. Respondent also admitted and the court found true  
15 the allegation that at the time of the offense she had a previous DUI. An additional count of  
16 violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a  
17 misdemeanor, was dismissed pursuant to a plea agreement.

18 21. As a result of the conviction, on or about May 21, 2009, Respondent was sentenced to  
19 48 months summary probation and ordered to be committed to the custody of the Riverside  
20 County Sheriff for ten days and pay fines and fees.

21 22. The facts that led to the conviction are that on or about February 11, 2009, at  
22 approximately 1:30 a.m., an officer with the Riverside County Sheriff's Office responded to a  
23 traffic accident in San Jacinto. Someone reported seeing a white car in a field off the road. The  
24 officer arrived on the scene and saw a white Mitsubishi Lancer stopped approximately forty yards  
25 into the dirt field off the road. The front driver side door was open and Respondent was leaning  
26 against the car, next to the open door. Respondent stood motionless and did not answer the  
27 officer's questions about her health or how her car ended up in the field. Eventually, Respondent  
28 said she was not hurt. The officer had Respondent walk from her car to the road to talk.

1 Respondent said drove and thought the field was a shortcut to another road as she was on her way  
2 to a friend's house in Hemet. The officer smelled alcohol on her breath and her person.  
3 Respondent's speech was slow and her eyes were red and watery. When the officer asked  
4 Respondent about her alcohol consumption, she began to cry and said, "I already have a DUI and  
5 a drunk in public, please don't arrest me." The officer asked Respondent to perform several field  
6 sobriety tests, which she failed. Respondent agreed to take a preliminary test of her BAC. The  
7 results of the first test were .218% BAC and the results of the second test were .231% BAC.  
8 Based on her statements and her inability to perform the field sobriety tests, the officer arrested  
9 Respondent and transported her to a local police station. At the station while the booking  
10 paperwork was being finished, Respondent smiled at the officer and said, "You know I'm going  
11 to get off this. Judges like pretty girls, I'll get off this." Later, while she was being transported to  
12 a nearby correctional facility Respondent said, "This won't stop me." When Respondent was  
13 asked what she meant by this statement, she replied, "It won't stop me from drinking and  
14 driving."

#### 15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

##### 16 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

17 23. Respondent's application is subject to denial under sections 480, subdivision  
18 (a)(3)(A), and 4301, subdivision (h) in that as described in paragraphs 13-14, 18, and 22, above,  
19 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself  
20 and the public when she operated a vehicle with a high BAC and was under the influence of  
21 alcohol in a public place.

#### 22 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

##### 23 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

24 24. Respondent's application is subject to denial under sections 480, subdivision  
25 (a)(3)(A), and 4301, subdivision (k) of the Code in that as described in paragraphs 13-14, 16-17,  
26 and 20-21, above, Respondent was convicted of more than one misdemeanor or felony involving  
27 the use or consumption of an alcoholic beverage.

28 ///

1 DISCIPLINARY CONSIDERATIONS

2 25. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
3 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about  
4 March 25, 2010, in case number 09705DRJM, Riverside County Superior Court, Respondent was  
5 cited for a violation of Vehicle Code section 12500, subdivision (a), driving without a valid  
6 driver's license. On or about September 20, 2010, Respondent paid \$85.00 to the court and the  
7 case was closed.

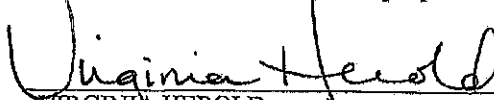
8 26. Complainant further alleges that on or about July 26, 2010, in a criminal proceeding  
9 entitled *People v. Jemma Debra Amanda Mole*, Riverside County Superior Court, case number  
10 SWM10004295, Respondent was convicted on her plea of guilty of violating Vehicle Code  
11 Section 14601.1, subdivision (a), driving with knowledge that her license was suspended, a  
12 misdemeanor; Vehicle Code section 26710, driving with a defective windshield or rear window,  
13 an infraction; and Vehicle Code section 4000, subdivision (a)(1), driving without registration, an  
14 infraction. The court granted summary probation for 36 months and ordered Respondent to pay a  
15 fine.

16 PRAYER

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

- 19 1. Denying the application of Jemma Debra Mole for a Pharmacy Technician  
20 Registration; and  
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 8/22/11



23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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