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

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

14 **ANGEL LOPEZ**  
15 **27039 Cypress St.**  
16 **Highland, CA 92346**  
17 **Applicant for Pharmacy Technician**  
18 **Registration**

19 Respondent.

Case No. 4164

OAH No. 2012110109

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

20 **FINDINGS OF FACT**

21 1. On or about June 1, 2012, Complainant Virginia Herold, in her official capacity as the  
22 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of  
23 Issues No. 4164 against Angel Lopez (Respondent) before the Board of Pharmacy.

24 2. On or about October 11, 2010, Respondent filed an application dated August 7, 2010,  
25 with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

26 3. On or about July 12, 2011, the Board issued a letter denying Respondent's application  
27 for Pharmacy Technician Registration. Sometime after that, in an undated letter, Respondent  
28 appealed the Board's denial of his application and requested a hearing.

1           4.    On or about June 22, 2012, an employee of the Department of Justice, served by  
2   Certified and First Class Mail a copy of the Statement of Issues No. 4164, Statement to  
3   Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5,  
4   11507.6, and 11507.7, and Notice from Respondent/Applicant to Respondent's address on the  
5   application form, which was and is 27039 Cypress St., Highland, CA 92346. A copy of the  
6   Statement of Issues is attached as exhibit A, and is incorporated herein by reference.

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

9           6.    A Notice of Hearing was served by mail at Respondent's address on the application  
10   and it informed him that an administrative hearing in this matter was scheduled for March 4,  
11   2013. Respondent failed to appear at that hearing.

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

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

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

17               (c) The respondent shall be entitled to a hearing on the merits if the respondent  
18               files a notice of defense, and the notice shall be deemed a specific denial of all parts  
19               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.

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

21               (a) If the respondent either fails to file a notice of defense or to appear at the  
22               hearing, the agency may take action based upon the respondent's express admissions  
23               or upon other evidence and affidavits may be used as evidence without any notice to  
24               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.

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

1 DETERMINATION OF ISSUES

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

4 2. Service of Statement of Issues No. 4164 and related documents was proper and in  
5 accordance with the law.

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

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

9 a. Violation of Business and Professions Code section 480 for a May 2011  
10 conviction for violating Vehicle Code section 23152(b) (driving while having more than .08%  
11 blood alcohol content) and a May 2007 conviction for violating the same vehicle code section and  
12 section 23152(a) (driving under the influence);

13 b. Violation of Business and Professions Code sections 4300(c) and 4301(h) for  
14 use of alcohol beverages in a dangerous or injurious manner for twice driving under the influence;

15 c. Violation of Business and Professions Code section 480 (c) for falsely failing to  
16 disclose these convictions on his application; and

17 d. Violation of Business and Professions Code section 4300 (c) and 4301 (k) for  
18 having multiple misdemeanor convictions involving the consumption of alcoholic beverages.

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1 ORDER

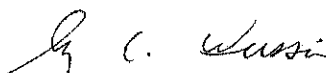
2 IT IS SO ORDERED that the application of Respondent Angel Lopez is hereby denied.

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

7 This Decision shall become effective on October 10, 2013.

8 It is so ORDERED ON September 10, 2013.

9 BOARD OF PHARMACY  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12   
13 By \_\_\_\_\_  
14 STANLEY C. WEISSER  
15 Board President  
16

17 DOJ docket number: LA2011601406  
18 51321330.DOC

19 Attachment:

20 Exhibit A: Statement of Issues No.4164; Proof of Service

21 Exhibit B: Notice of Hearing; Proof of Service  
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23  
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**Exhibit A**

**Statement of Issues No. 4164; Proof of Service**

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2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
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7 *Attorneys for Complainant*

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

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

Case No. 4164

13 **ANGEL LOPEZ**  
27039 Cypress Street  
14 Highland, CA 92346

**STATEMENT OF ISSUES**

15 Applicant for Pharmacy Technician  
16 Registration

Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 11, 2010, the Board of Pharmacy (Board) received an  
24 application for an Applicant for Pharmacy Technician Registration from Angel Lopez  
25 (Respondent). On or about August 7, 2010, Angel Lopez certified under penalty of perjury to the  
26 truthfulness of all statements, answers, and representations in the application. The Board denied  
27 the application on July 12, 2011.

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1 (1) Medical or psychiatric evaluation.  
2 (2) Continuing medical or psychiatric treatment.  
3 (3) Restriction of type or circumstances of practice.  
4 (4) Continuing participation in a board-approved rehabilitation program.  
5 (5) Abstention from the use of alcohol or drugs.  
6 (6) Random fluid testing for alcohol or drugs.  
7 (7) Compliance with laws and regulations governing the practice of  
8 pharmacy. "

9 6. Section 4301 lists examples of unprofessional conduct:

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

14 ...

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

20 ...

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

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

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

#### REGULATORY PROVISIONS

20 7. California Code of Regulations, title 16, section 1770 in pertinent part defines when a  
21 crime or act is substantially related to a license or registration:

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

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1                                    **FIRST CAUSE FOR DENIAL OF APPLICATION**

2                                    **(Convictions of Substantially-Related Crimes)**

3            8.    Respondent's application is subject to denial under sections 480, subdivisions (a)(1)  
4    and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that  
5    Respondent was convicted of crimes substantially related to the qualifications, functions, or  
6    duties of a pharmacy technician, as follows:

7            a.    On or about May 09, 2011, after pleading *nolo contendere*, Respondent was  
8    convicted of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08%  
9    and more, by weight, of alcohol in his blood], in the criminal proceeding entitled *People v. Angel*  
10   *Lopez* (Super. Ct. San Bernardino County, 2011, No. TVA801455). The court sentenced  
11   Respondent to 45 days in jail, placed him on probation for a period of 36 months, and fined him.

12           b.    The circumstances surrounding 2011 conviction are that on or about June 22, 2008,  
13   the San Bernardino Sheriff's Department stopped Respondent for speeding at 100 mph on the 210  
14   freeway. He admitted to drinking and a preliminary field screening showed his blood alcohol  
15   content was .243% and .255%.

16           c.    On or about May 30, 2007, after pleading guilty Respondent was convicted of two  
17   misdemeanor counts for violating Vehicle Code section 23152, subdivision (a) [driving under the  
18   influence of drugs and/or alcohol] and Vehicle Code section 23152, subdivision (b) [driving  
19   while having 0.08% and more, by weight, of alcohol in his blood], in the criminal proceeding  
20   entitled *People v. Angel Lopez* (Super. Ct. Riverside County, 2007, No. RIM498329). The court  
21   sentenced Respondent to a total of 12 days in jail, placed him on probation for a period of 36  
22   months, and fined him.

23           d.    The circumstances surrounding the conviction are that on or about April 4, 2007,  
24   officers of the California Highway Patrol Riverside Department saw Respondent sitting alongside  
25   the road in a parked car with the door open and several empty beer cans on the ground in front of  
26   him. He appeared drunk. They warned him not to drive drunk and to have a woman who was  
27   with him drive him home. Despite their admonition, later that same day in the same area they  
28   saw him driving his car and stopped him. He was still drunk. He failed field sobriety tests and

1 two breathalyzer tests showed he had a blood alcohol content of .147% and .140%.

2 e. On or about April 12, 2006, after pleading guilty, Respondent was convicted of  
3 misdemeanor count of violating Penal Code section 647, subdivision (f) [disorderly conduct:  
4 Intoxication of drugs and/or alcohol], in the criminal proceeding entitled *The People of the State*  
5 *of California v. Angel Lopez* (Super. Ct. Santa Ana County, 2005, No. 06CM01931). The court  
6 ordered Respondent to pay a fine.

7 f. The circumstances surrounding the conviction are that on or about November 25,  
8 2005, Respondent was found drunk in his parked car with the keys in his ignition. Two  
9 breathalyzer tests showed he had a blood alcohol content of .100% and .101%.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Dangerous Self-Administration of Alcoholic Beverages)**

12 9. Respondent's application is subject to denial under sections 4300 subdivision (c) and  
13 4301 subdivision (h) on the grounds of unprofessional conduct because on or about June 22, 2008  
14 and April 02, 2007 Respondent drank substantial amounts of alcohol and drove while highly  
15 intoxicated, making him a danger to himself and others. Complainant refers to, and by this  
16 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as  
17 though set forth fully.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

20 10. Respondent's application is subject to denial under section 480, subdivision (c), in  
21 that on or about August 7, 2010, Respondent knowingly made a false statement of fact by failing  
22 to disclose any convictions on his application for licensure. Complainant refers to, and by this  
23 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as  
24 though set forth fully.

25 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

26 **(Multiple Convictions Involving the Consumption of Alcoholic Beverages)**

27 11. Respondent's application is subject to denial under Code sections 4300 subdivision  
28 (c) and 4301 subdivision (k) because he has three misdemeanor convictions involving the use,

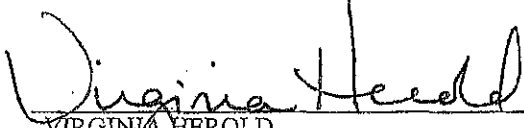
1 consumption, or self-administration of alcoholic beverages. Complainant refers to, and by this  
2 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as  
3 though set forth fully.

4 PRAYER

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

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

10  
11 DATED: 6/1/12

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

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