

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Statement of Issues
Against:
ALEXIS A. CARRION
Pharmacy Technician Registration
Applicant

Respondent.

Case No. 4358
OAH No. 2012101053
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about August 14, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 4358 against Alexis A. Carrion (Respondent) before the Board of Pharmacy.

2. On or about May 9, 2011, Respondent filed an application dated April 25, 2011, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

3. On or about April 16, 2012, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about May 29, 2012, Respondent appealed the Board's denial of his application and requested a hearing.

4. On or about October 1, 2012, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 4358, Statement to Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7,

1 Respondent/Applicant's Notice of Designation of Counsel, and Respondent/Applicant's Notice of
2 Withdrawal of Request for Hearing to Respondent's address on the application form, which was
3 and is 3626 Verbena Rose Ct., N. Las Vegas, NV 89081. A copy of the Statement of Issues is
4 attached as Exhibit A, and is incorporated herein by reference.

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

7 6. Based on Respondent's appeal of the denial of his application and his request for a
8 hearing in this action, a Notice of Hearing was served by mail at Respondent's address on the
9 application. It informed him that an administrative hearing in this matter was scheduled for
10 February 4, 2013. Respondent failed to appear at that hearing.

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

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

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

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

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

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

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

///

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Alexis A. Carrion has subjected
3 his application for a Pharmacy Technician Registration to denial.

4 2. Service of Statement of Issues No. 4358 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 violation alleged in the Statement of Issues:

9 5. Respondent's application for registration as a pharmacy technician is subject to denial
10 under sections 480, subdivision (a)(3)(A) of the Code in that he was under the influence of the
11 controlled substance methamphetamine on March 20, 2006. Said conduct would be a ground for
12 discipline under section 4301, subdivision (h) of the Code for a licensed pharmacy technician.

13 **ORDER**

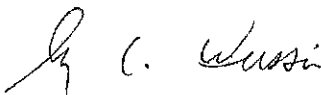
14 IT IS SO ORDERED that the application of Respondent Alexis A. Carrion is hereby
15 denied.

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

20 This Decision shall become effective on April 19, 2013.

21 It is so ORDERED ON March 20, 2013.

22 BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS
24 STATE OF CALIFORNIA

25 
26 By _____
27 STANLEY C. WEISSER
28 Board President

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SD2012703769
Attachment:
Exhibit A: Statement of Issues No. 4358

Exhibit A

Statement of Issues No. 4358

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

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

Case No. 4358

13 **ALEXIS A. CARRION**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

17
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 May 9, 2011, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Alexis A. Carrion
24 (Respondent). On or about April 25, 2011, Alexis A. Carrion certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on April 16, 2012.

27 ///

28 ///

AGO - 001

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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may
6 refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole
7 discretion, issue a probationary license to any applicant for a license who is guilty of
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

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

13 (1) Knowingly making a false statement of material fact, or knowingly
14 omitting to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the
17 intent to substantially benefit himself or another, or substantially injure another.

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

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

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a
24 lack of good moral character or any similar ground relating to an applicant's
25 character, reputation, personality, or habits.

26 6. Section 477 of the Code states:

27 As used in this division:

28 (a) "Board" includes "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a
business or profession regulated by this code.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Section 480 of the Code states:

(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.

8. Section 482 of the Code states:

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

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

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

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

9. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500)

1 of this code, or any initiative act referred to in that division, from taking disciplinary
2 action against a licensee or from denying a license for professional misconduct,
3 notwithstanding that evidence of that misconduct may be recorded in a record
4 pertaining to an arrest.

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

8 10. Section 4301 of the Code states:

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

13

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

19

20 REGULATORY PROVISIONS

21 11. California Code of Regulations, title 16, section 1768 states:

22 (a) Where the board has denied an application for a license, the earliest date on
23 which the applicant may reapply for a license is one year after the effective date of
24 the denial.

25 (b) All competent evidence of rehabilitation presented will be considered upon
26 a reapplication. The board shall use the criteria listed in section 1769 when
27 considering evidence of rehabilitation.

28 12. California Code of Regulations, title 16, section 1769 states:

(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.

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

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

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

6

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

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

11 DRUG

12 14. Methamphetamine is a Schedule II controlled substance as designated by Health
13 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
14 and Professions Code section 4022.

15 CAUSE FOR DENIAL OF APPLICATION

16 (Under the Influence of a Controlled Substance on March 20, 2006)

17 15. Respondent's application for registration as a pharmacy technician is subject to denial
18 under sections 480, subdivision (a)(3)(A) of the Code in that Respondent was under the influence
19 of the controlled substance methamphetamine on March 20, 2006. Said conduct would be a
20 ground for discipline under section 4301, subdivision (h) of the Code for a licensed pharmacy
21 technician. The circumstances are as follows:

22 a. On or about 1:30 in the morning of March 20, 2006, patrol officers with the
23 Chula Vista Police Department responded to a park regarding suspicious activity. Upon arrival,
24 an officer heard the sound of breaking glass, and he found a broken methamphetamine pipe and a
25 sock containing controlled substance paraphernalia near a vehicle with several young adults
26 nearby, including Respondent. The officer examined Respondent and found that his pupils were
27 slow to react to light, his tongue had a white, filmy coating, and his pulse was 133 beats per
28 minute. Respondent admitted to the officer that he had just smoked methamphetamine.

1 Respondent told the officer that he met with friends with the intention of going to the park and
2 smoking methamphetamine. Respondent provided the drug and the paraphernalia to his friends;
3 the police showed up before his friends had a chance to smoke. Respondent was arrested for
4 being under the influence of methamphetamine.

5 b. As a result of the arrest, on or about June 12, 2006, in a criminal proceeding
6 entitled *People of the State of California vs. Alexis Amadeo Carrion*, in San Diego County
7 Superior Court, case number S202615, Respondent pled no contest to violating Health and Safety
8 Code section 11550, subdivision (a), under the influence of a controlled substance, to wit,
9 methamphetamine, a misdemeanor.

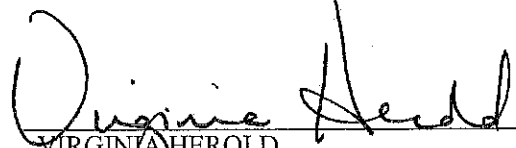
10 c. As a result of the plea, on or about June 6, 2006, the court deferred entry of
11 judgment for 18 months. Respondent satisfactorily completed the court's diversion program.
12 Respondent's plea was set aside and the charges were dismissed pursuant to Penal Code section
13 1000.

14 **PRAYER**

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

- 17 1. Denying the application of Alexis A. Carrion for a Pharmacy Technician
18 Registration;
19 2. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 8/14/12


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

26 SD2012703769

28 **AGO - 006**