

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

In the Matter of the Statement of Issues Against:

Case No. 4486

**NELSON LOYA**

OAH No. 2013070300

Pharmacy Technician Registration Applicant

Respondent.

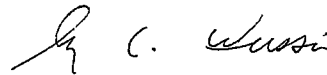
**DECISION AND ORDER**

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 April 28, 2014.

It is so ORDERED on March 28, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

STAN 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:

Case No. 4486

NELSON EDDIE LOYA,

OAH No. 2013070300

Respondent.

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 5, 2014, in Sacramento, California.

Janice Lachman, Supervising Deputy Attorney General, represented Virginia Herrold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Nelson Eddie Loya (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 5, 2014.

**FACTUAL FINDINGS**

1. On June 5, 2012, the Board received a Pharmacy Technician Application from respondent. Complainant seeks to deny respondent's application based upon the two alcohol-related convictions described below.

2. On March 12, 2010, in the Stanislaus County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level above .08 percent (DUI), a misdemeanor. Respondent was placed on 36 months of informal probation. He was ordered to serve seven days in jail, and was given credit for five days. He was also ordered to complete a Level 1 Drinking Drivers Program, and to pay fines and fees.

3. The incident underlying respondent's DUI conviction occurred on February 7, 2010. Respondent was arrested after he crashed into a tree while driving his vehicle. Respondent's blood alcohol level was measured at .13 percent. Respondent was 19 years old at the time of this incident.

4. On March 25, 2010, respondent, on a plea of no contest, was convicted of violating Vehicle Code section 23103.5, reckless driving involving alcohol (wet reckless), a misdemeanor. Respondent was placed on probation for 36 months. He was ordered to serve three days in jail, and was given credit for three days served. He was also ordered to attend traffic school for 12 hours, and to pay fines and fees. As a result of this conviction, his driver's license was suspended for 12 months.

5. The incident underlying respondent's wet reckless conviction occurred on September 6, 2009. Respondent had been drinking with friends at a friend's house. He believed that he was safe to drive home. He was stopped at a sobriety/driver's license check point. Respondent's blood alcohol level was measured at .08 percent. Respondent was 18 years old at the time of this incident.

6. At hearing, respondent testified that his convictions occurred when he was "very young and immature," and going through a "rough time" in his life. He admitted that he started drinking when he was 17 years old and a senior in high school. He completed the court-ordered DUI classes. As a result of his convictions, he lost his driver's license for two years. Because there was no public transportation where he lived, he had to ask people for rides to get where he wanted to go.

7. Respondent testified that he has learned from his convictions and was thankful that he did not kill anyone. He stated that his "mind wasn't in the right place" at the time of his convictions. He now mentors his friends who feel "invincible" and believe that they can drink and drive by telling them that what happened to him could happen to them. Respondent does not, however, completely abstain from alcohol consumption at this time. He asserted that he only drinks on "rare occasions," and only consumes a "couple of beers." He denied that he had a drinking problem, and asserted that his convictions were the result of "poor decisions." Other than the court-ordered programs, he has not participated in any programs or counseling to address alcohol consumption issues.

8. Respondent served a total of five days in jail for his two convictions. While there, he realized that jail was "not the place" for him. He thereafter moved to Sacramento to change his life. He went to school at Anthem College for nine months to become a pharmacy technician.

9. When respondent was not granted a pharmacy technician license, he moved back to San Jose to live with his mother. He got a job as a maintenance technician at the Academy of Arts, where he worked for nine months. An electrician there told him about the electrician school he attended. Respondent entered the electrician program at that school

about one year and three months ago. He is currently in his third semester. He has another three to four years to go before he completes the program and becomes an electrician. He is now working as an apprentice electrician. At hearing, respondent was not certain at this time what he will do if he obtains a pharmacy technician registration given his training and work as an electrician.

10. In his letter requesting a hearing, respondent stated that, on the date he was arrested for the wet reckless (September 6, 2009), he had gone to a marijuana dispensary to purchase marijuana with his cannabis card. He explained that he had "insomnia and an eating disorder and the marijuana help[ed him] with that." Respondent attached to his letter a Medical Cannabis Patient Identification Card, which had an expiration date of August 3, 2010. At hearing, respondent testified that his marijuana use was "in the past." He stated that he could not sleep or eat, took the treatment of these conditions into his "own hands," and obtained the cannabis card when he was 18 because he thought he needed it at the time. Respondent asserted that he only had the cannabis card for one year, and that he no longer smokes marijuana. He denied ever using any drugs stronger than marijuana. He asserted that he would not take any prescription pills or other "hard core" drugs.

11. In California Code of Regulations, title 16, section 1769, subdivision (a), the Board has set forth criteria for evaluating the rehabilitation of a license applicant who has been convicted of a crime. These criteria include:

- (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.

12. At the hearing, respondent testified in a candid and direct fashion. He took responsibility for his illegal conduct. He showed insight into his wrongdoing. He has made important strides toward turning his life around.

13. But when all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (a), respondent did not

show that he has engaged in sufficient rehabilitation to receive a pharmacy technician registration. He had two alcohol-related convictions less than four years ago. He offered no evidence from any family, friends, doctors, counselors, or employers to substantiate that he is sufficiently rehabilitated and ready to be a pharmacy technician. He did not submit any documentation to support that he has fully complied with the terms and conditions of his probations.

14. The Board and the public expect a pharmacy technician to act with responsibility, maturity and integrity. Respondent's two alcohol-related convictions and his failure to submit sufficient evidence to substantiate his rehabilitation show that it would be inconsistent with the public health, safety and welfare to grant respondent a pharmacy technician registration at this time. Respondent's application must, therefore, be denied.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a)(1), a license application may be denied when the applicant has been "convicted of a crime" that is substantially related to the qualifications, functions or duties of the business or profession for which application was made.<sup>1</sup> Pursuant to Business and Professions Code section 4300, subdivision (c), the Board may refuse to issue a license to an "applicant guilty of unprofessional conduct." Business and Professions Code section 4301, subdivision (l) defines "unprofessional conduct" to include a "conviction of a crime substantially related to the qualifications, functions, and duties of" a Board licensee. In California Code of Regulations, title 16, section 1770, the Board has stated that a crime will 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."

2. Respondent's two alcohol-related convictions are substantially related to the qualifications, functions and duties of a pharmacy technician in that they evidence respondent's present or potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, or welfare. As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety

---

<sup>1</sup> Business and Professions Code section 477, subdivision (b), states that the term "license" includes "certificate, registration or other means to engage in a business or profession regulated by this code."

and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

The court's reasoning in *Griffiths* applies in this case. Respondent's convictions establish cause to deny respondent's application under Business and Professions Code sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (1).


3. Pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), the Board may deny a license application when the applicant has done "any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license." Respondent's two convictions would be grounds for suspension or revocation of a pharmacy technician's registration under Business and Professions Code section 4301, subdivision (1). They therefore constitute cause to deny respondent's application under Business and Professions Code section 480, subdivision (a)(3)(A).

4. As set forth in Findings 12 through 14, while respondent's efforts toward rehabilitation should be commended and encouraged, respondent did not establish that he has been sufficiently rehabilitated to demonstrate that it would be consistent with the public health, safety and welfare to issue him a pharmacy technician registration at this time. Respondent's Pharmacy Technician Application should therefore be denied.

#### ORDER

The Pharmacy Technician Application submitted by respondent Nelson Eddie Loya is DENIED.

DATED: February 7, 2014



KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 ANAHITA S. CRAWFORD  
Deputy Attorney General  
4 State Bar No. 209545  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-8311  
Facsimile: (916) 327-8643  
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: Case No. 4486  
12 **NELSON EDDIE LOYA**  
13 Respondent. **STATEMENT OF ISSUES**

14  
15 Complainant alleges:

16 PARTIES

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

19 2. On or about June 5, 2012, the Board of Pharmacy, Department of Consumer Affairs  
20 received an application for a Pharmacy Technician from Nelson Eddie Loya (Respondent). On or  
21 about June 1, 2012, Nelson Eddie Loya certified under penalty of perjury to the truthfulness of all  
22 statements, answers, and representations in the application. The Board denied the application on  
23 September 28, 2012.

24 JURISDICTION

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

28 ///





1 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
2 contendere is deemed to be a conviction within the meaning of this provision. The  
3 board may take action when the time for appeal has elapsed, or the judgment of  
4 conviction has been affirmed on appeal or when an order granting probation is made  
5 suspending the imposition of sentence, irrespective of a subsequent order under  
6 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
7 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
8 dismissing the accusation, information, or indictment.

9 6. Section 480 of the Business and Professions Code provides that:

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

12 (1) Been convicted of a crime. A conviction within the meaning of this  
13 section means a plea or verdict of guilty or a conviction following a plea of nolo  
14 contendere. . . .

15 . . . .  
16 (3)(A) Done any act that if done by a licentiate of the business or profession in  
17 question, would be grounds for suspension or revocation of license.

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Criminal Conviction)**

23 7. Respondent's application is subject to denial for unprofessional conduct pursuant to  
24 section 480 subsection (a)(1) and section 4300, subsection (c) as defined in section 4301,  
25 subsection (l), as follows:

26 a. On or about March 25, 2010, in a criminal proceeding entitled the *People of the*  
27 *State of California vs. Loya, Nelson E.*, County of Alameda, Case No. 421737, Respondent was  
28 convicted on his plea of no contest to violating Vehicle Code section 23103.5, reckless driving  
involving alcohol, a misdemeanor. The circumstances were that on or about September 6, 2009,  
Officers with San Leandro Police Department were working a DUI checkpoint. Officers stopped  
Respondent, who displayed objective signs of alcohol consumption. Respondent failed to  
perform field sobriety tests as demonstrated and was arrested for driving under the influence. His  
blood alcohol level was .08%. Respondent was not of drinking age at the time of his arrest.  
Respondent possessed 25 grams of marijuana in his car and had a valid medical marijuana card.

///

1 Respondent was sentenced to 3 years' summary probation, 3 days jail, fines and to enroll in a 12  
2 hour DUI program.

3 a. On or about March 12, 2010, in a criminal proceeding entitled the *People of the*  
4 *State of California vs. Nelson Eddie Loya.*, County of Stanislaus, Case No. 1414297, Respondent  
5 was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(b), driving  
6 with a blood alcohol level above .08%, a misdemeanor. The circumstances were that on or about  
7 February 7, 2010, Deputies with the Stanislaus County Sheriff's Department responded to a  
8 report of the sound of a vehicle collision and the sound of the vehicle leaving the scene. Upon  
9 arrival at the scene, Deputies observed skid marks leading to a tree in the front yard of a  
10 residence. A license plate was located at the base of the tree, which led Deputies to Respondent  
11 who was in bed at his home. Deputies had Respondent perform field sobriety tests, which he was  
12 unable to do. Respondent displayed objective signs of intoxication. Respondent was arrested for  
13 driving under the influence and his blood alcohol level was a .13%. Respondent was sentenced to  
14 7 days in jail, fine and to enroll in a DUI first offender program.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts if Done by a Licentiate)**

17 8. Respondent's application is subject to denial for unprofessional conduct under section  
18 480, subsection (a)(3)(A) for violation of section 4301, subsection (l), in that if Respondent were  
19 licensed, his license would be subject to discipline based on the conduct described in paragraph 7,  
20 above.

21  
22  
23  
24  
25  
26 ///  
27 ///  
28 ///

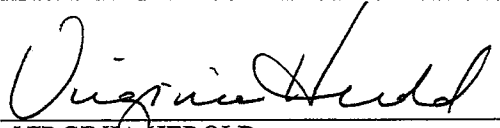
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PRAYER

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

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

DATED: 6/10/13



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

SA2012108982  
11058808