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

In the Matter of the Statement of Issues  
Against:

**MELINDA CASTRO  
1230 Hull Place, #4  
Oxnard, CA 93030  
Pharmacy Technician Registration**

Respondent.

Case No. 4508

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about March 17, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Statement of Issues No. 4508 against Melinda Castro (Respondent) before the Board of Pharmacy.
2. On or about May 31, 2011, Respondent filed an application dated May 17, 2011, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.
3. On or about September 13, 2012, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about November 6, 2012, Respondent appealed the Board's denial of her application and requested a hearing.

1           4.    On or about March 17, 2013, an employee of the Department of Justice, served by  
2 Certified and First Class Mail a copy of the Statement of Issues No. 4508, Statement to  
3 Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5,  
4 11507.6, and 11507.7, Notice from Respondent/Applicant, and Disciplinary Guidelines to  
5 Respondent's address on the application form, which was and is 1230 Hull Place, #4  
6 Oxnard, CA 93030. A copy of the Statement of Issues is attached as exhibit A, and is  
7 incorporated herein by reference.

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

10          6.    On or about November 6, 2012, Respondent appealed the denial of her application  
11 and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's  
12 address on the application and it informed her that an administrative hearing in this matter was  
13 scheduled for February 24, 2014. Respondent failed to appear at that hearing.

14          7.    Government Code section 11506 states, in pertinent part:

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

18          8.    California Government Code section 11520 states, in pertinent part:

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

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

2 1. Based on the foregoing findings of fact, Respondent Melinda Castro has subjected her  
3 application for a Pharmacy Technician Registration to denial.

4 2. Service of Statement of Issues No. 4508 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 Substantially related convictions of crimes and failing to disclose said crimes on her  
10 application for licensure pursuant to section 480 (a)(1) and (c).

11 ORDER

12 IT IS SO ORDERED that the application of Respondent Melinda Castro is hereby denied.

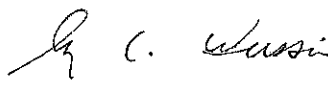
13 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
14 written motion requesting that the Decision be vacated and stating the grounds relied on within  
15 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
16 vacate the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

17 This Decision shall become effective on August 20, 2014.

18 It is so ORDERED July 21, 2014.

19  
20 BOARD OF PHARMACY  
21 DEPARTMENT OF CONSUMER AFFAIRS  
22 STATE OF CALIFORNIA

23 By

  
\_\_\_\_\_  
24 STAN C. WEISSER  
25 Board President

26 DOJ docket number:LA2012508271

27 Attachment: Exhibit A: Statement of Issues No.4508  
28

Exhibit A

Statement of Issues No. 4508

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 CHRISTINA THOMAS  
Deputy Attorney General  
4 State Bar No. 171168  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2557  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Statement of Issues  
Against:

Case No. 4508

12 **MELINDA CASTRO,**

**STATEMENT OF ISSUES**

13  
14 Respondent.

15  
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 May 31, 2011, the Board of Pharmacy (Board) received an application  
21 for a Pharmacy Technician Registration from Melinda Castro (Respondent). On or about May  
22 17, 2011, Respondent certified under penalty of perjury to the truthfulness of all statements,  
23 answers, and representations in the application. The Board denied the application on September  
24 13, 2012.

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 STATUTORY PROVISIONS

2 4. Section 480 states, in pertinent part:

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

5 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
6 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
7 board is permitted to take following the establishment of a conviction may be taken when the  
8 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
9 an order granting probation is made suspending the imposition of sentence, irrespective of a  
10 subsequent order under the provisions of Section 1203.4 of the Penal Code.

11 . . . .

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

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

17 "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
18 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
19 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
20 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
21 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
22 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
23 Section 482.

24 "(c) A board may deny a license regulated by this code on the ground that the applicant  
25 knowingly made a false statement of fact required to be revealed in the application for the  
26 license."

27 ///

28 ///

1           5.     Section 490 states, in pertinent part:

2           "(a) In addition to any other action that a board is permitted to take against a licensee, a  
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
5 or profession for which the license was issued.

6           "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
7 discipline a licensee for conviction of a crime that is independent of the authority granted under  
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
9 of the business or profession for which the licensee's license was issued.

10          "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
14 made suspending the imposition of sentence, irrespective of a subsequent order under the  
15 provisions of Section 1203.4 of the Penal Code."

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

18          7.     Section 4301 states, in pertinent part:

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

22                 ....

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

28                 ....

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

18           ....  
19           (p) Actions or conduct that would have warranted denial of a license."

20   **REGULATORY PROVISIONS**

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

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

28           ///



1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Convictions of Crimes)**

3 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
4 that Respondent was convicted of crimes, as follows:

5 a. On or about January 16, 2013, after pleading guilty, Respondent was convicted of one  
6 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while  
7 having 0.08% and more, by weight, of alcohol in her blood] in the criminal proceedings entitled  
8 *The People of the State of California v. Melinda Castro* (Super. Ct. Ventura County, 2013, No.  
9 2011032022). The Court sentenced Respondent to serve 3 days in Ventura County Jail and  
10 placed her on 36 months formal probation, with terms and conditions. The circumstances  
11 surrounding the conviction are that on or about September 5, 2011, the Oxnard Police Department  
12 received a call regarding an individual who was passed out or sleeping in the drive thru of a Taco  
13 Bell. When the officers arrived, an employee of Taco Bell advised them the driver had just  
14 driven off and that there was an unrestrained child in the front seat. The employee was able to  
15 provide the officers with the license plate number of the vehicle. The officers were able to locate  
16 the address of the registered owner where Respondent was contacted. Officers arrived at the  
17 home and found Respondent in a locked room eating Taco Bell with a small child. While  
18 speaking to Respondent the officer smelled a strong odor of alcohol emitting from her breath and  
19 body. She was observed to have slurred speech and her eyes were extremely dilated. During the  
20 booking procedure, Respondent submitted to a blood test that resulted in a blood-alcohol-content  
21 level of 0.21%.

22 b. On or about May 16, 2012, after pleading guilty, Respondent was convicted of one  
23 misdemeanor count of violating Vehicle Code section 14601, [driving while driving privileges are  
24 suspended or revoked] in the criminal proceedings entitled *The People of the State of California*  
25 *v. Melinda Castro* (Super. Ct. Ventura County, 2012, No. 2012014718). The Court sentenced  
26 Respondent to serve 5 days in Ventura County Jail and placed her on 36 months probation, with  
27 terms and conditions. The circumstances surrounding the conviction are that on or about March  
28 20, 2012, Respondent drove a vehicle while her driving privileges were suspended or revoked.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

3 10. Respondent's application is subject to denial under section 480, subdivision (c), in  
4 that on or about May 17, 2011, Respondent knowingly made a false statement of fact by failing to  
5 disclose her 2012 conviction case against her, on her application for licensure. In addition,  
6 Respondent signed under penalty of perjury, under the laws of the State of California, that the  
7 forgoing was true and correct, on her application for licensure. Complainant refers to, and by this  
8 reference incorporates, the allegations set forth in paragraph 9, subparagraph (b), as though set  
9 forth fully.

10 **THIRD CAUSE FOR DENIAL OF APPLICATION**

11 **(Acts Warranting Denial of Licensure)**

12 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and  
13 480, subdivisions (a)(3)A) and (a)(3)B), in that Respondent committed acts which if done by a  
14 licentiate of the business and profession in question, would be grounds for suspension or  
15 revocation of her license as follows:

16 a. Respondent was convicted of crimes substantially related to the qualifications,  
17 functions, or duties of a pharmacy technician which to a substantial degree evidence her present  
18 or potential unfitness to perform the functions authorized by her license in a manner consistent  
19 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,  
20 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
21 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs  
22 (a) and (b), inclusive, as though set forth fully.

23 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or  
24 injurious to herself, another person, or the public, in violation of section 4301, subdivision (h).  
25 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
26 paragraph 9, subparagraph (a), as though set forth fully.

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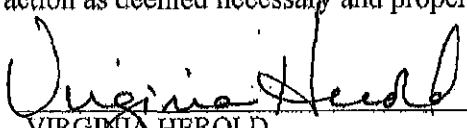
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PRAYER

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

1. Denying the application of Melinda Castro for a 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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