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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:  
**CARLOS KYAN SOLANO**  
3443 Eckhart Avenue  
Rosemead, CA 91770  
Registration as a Pharmacy Technician  
Respondent.

Case No. 4527  
OAH No. 2013050721  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, § 11520]

**FINDINGS OF FACT**

1. On or about April 4, 2013, 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. 4527 against Carlos Kyan Solano (Respondent) before the Board of Pharmacy.
2. On or about June 21, 2012, Respondent filed a Pharmacy Technician Application dated May 22, 2013, with the Board of Pharmacy to obtain registration as a Pharmacy Technician.
3. On or about November 7, 2012, the Board issued a letter denying Respondent's Pharmacy Technician Application. On or about December 5, 2012, Respondent appealed the Board's denial of his application and requested a hearing.

1           4.     On or about April 18, 2013, an employee of the Department of Justice, served by  
2 Certified and First Class Mail a copy of the Statement of Issues No. 4527, 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 3443 Eckhart Avenue, Rosemead, CA 91770. 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.     On or about December 5, 2012, Respondent appealed the denial of his application and  
10 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's  
11 address on the application and it informed him that an administrative hearing in this matter was  
12 scheduled for October 16, 2013. Respondent failed to appear at that hearing.

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

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

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

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

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

#### **DETERMINATION OF ISSUES**

1           1.     Based on the foregoing findings of fact, Respondent Carlos Kyan Solano has  
2 subjected his Pharmacy Technician Application to denial.

1           2.     Service of Statement of Issues No. 4527 and related documents was proper and in  
2 accordance with the law.

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

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

6           a.     Respondent's application is subject to denial under section 480, subdivision  
7 (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in  
8 that on or about April 29, 2002, Respondent pled guilty to and was convicted of one misdemeanor  
9 count of violating Penal Code section 243(e)(1) [battery of spouse], a substantially related crime,  
10 in the criminal proceeding entitled *The People of the State of California v. Carlos Solano* (Super.  
11 Ct. of California, County of Los Angeles, 2002, Case No. 2FC00204).

12           b.     Respondent's application is subject to denial under section 480, subdivision  
13 (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in  
14 that on or about October 16, 2002, Respondent pled nolo contendere to and was convicted of one  
15 misdemeanor count of violating Vehicle Code section 12500(a) [drive with suspended license], a  
16 substantially related crime, in the criminal proceeding entitled *The People of the State of*  
17 *California v. Carlos Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2002, Case  
18 No. 2SM03064).

19           c.     Respondent's application is subject to denial under section 480, subdivision  
20 (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in  
21 that on or about July 7, 2003, Respondent pled nolo contendere to and was convicted of one  
22 misdemeanor count of violating Penal Code section 243(e)(1) [battery of spouse], a substantially  
23 related crime, in the criminal proceeding entitled *The People of the State of California v. Carlos*  
24 *Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2003, Case No. 3FC00254).

25           d.     Respondent's application is subject to denial under section 480, subdivision  
26 (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in  
27 that on or about February 9, 2004, Respondent pled nolo contendere to and was convicted of one  
28 misdemeanor count of violating Penal Code section 484(a) [theft], a substantially related crime, in

1 the criminal proceeding entitled *The People of the State of California v. Carlos Kyan Solano*  
2 (Super. Ct. of California, County of Los Angeles, 2003, Case No. 3EL10305).

3 e. Respondent's application is subject to denial under section 480, subdivision  
4 (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in  
5 that on or about December 2, 2010, Respondent pled nolo contendere to and was found guilty of  
6 one misdemeanor count of violating Health and Safety Code section 11377(a) [possession of  
7 controlled substance], a substantially related crime, in the criminal proceeding entitled *The*  
8 *People of the State of California v. Carlos Kyan Solano* (Super. Ct. of California, County of Los  
9 Angeles, 2010, Case No. 0RI05379). The court placed Respondent on probation for a period of 1  
10 year under the terms and conditions of Proposition 36. On or about July 25, 2011, the court  
11 revoked Respondent's probation, terminated the Proposition 36 program and convicted  
12 Respondent.

13 f. Respondent's application is subject to denial under section 480, subdivision  
14 (a)(2) of the Code in that Respondent committed acts involving dishonesty, fraud or deceit with  
15 the intent to substantially benefit himself when he committed theft. On or about February 9,  
16 2004, Respondent was criminally convicted of this charge.

17 g. Respondent's application is subject to denial under section 480, subdivision  
18 (a)(3) of the Code in that Respondent committed acts constituting grounds for discipline of a  
19 licensee, when he was convicted of crimes substantially related to the qualifications, functions  
20 and duties of a pharmacy technician, committed an act involving dishonesty, committed  
21 unprofessional conduct when possessed Methamphetamine and drug paraphernalia, violated  
22 California statutes regulating controlled substances and dangerous drugs, and when he violated  
23 provisions of the licensing chapter.

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**ORDER**

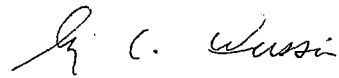
IT IS SO ORDERED that the application of Respondent Carlos Kyan Solano is hereby denied.

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

This Decision shall become effective on January 17, 2014.

It is so ORDERED ON December 18, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
STAN C. WEISSER  
Board President

DOJ docket number:LA2012508399  
51386046.DOC

Attachment: Exhibit A (Statement of Issues No.4527)

**Exhibit A**

**Statement of Issues No. 4527**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804

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  
12 Against:  
13 **CARLOS KYAN SOLANO**  
14 Registration as a Pharmacy Technician  
15 Applicant  
16 Respondent.

Case No. 4527

**STATEMENT OF ISSUES**

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 21, 2012, the Board of Pharmacy, Department of Consumer Affairs  
22 received a Pharmacy Technician Application from Carlos Kyan Solano ("Respondent"). On or  
23 about May 22, 2012, Carlos Kyan Solano certified under penalty of perjury to the truthfulness of  
24 all statements, answers, and representations in the application. The Board denied the application  
25 on November 7, 2012.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Statement of Issues is brought before the Board of Pharmacy ("Board"),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 480 of the Code states, in pertinent part:

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

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

12 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
13 substantially benefit himself or herself or another, or substantially injure another.

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

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

19 5. Section 493 of the Code states:

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

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

6. 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)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion



1 program operated by any agency established under Division 2 (commencing with  
Section 500) of this code, or any initiative act referred to in that division."

2 7. Section 490 of the Code states in pertinent part:

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

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

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

20 8. Section 4301 of the Code states in pertinent part:

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

25 ...

26 (f) The commission of any act involving moral turpitude, dishonesty,  
27 fraud, deceit, or corruption, whether the act is committed in the course of relations as  
28 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(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.

...

(j) The violation of any of the statutes of this state, or any other state, or  
of the United States regulating controlled substances and dangerous drugs.

...

(l) The conviction of a crime substantially related to the qualifications,  
functions, and duties of a licensee under this chapter. The record of conviction of a  
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United

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

17 ...  
18 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
19 or abetting the violation of or conspiring to violate any provision or term of this  
20 chapter or of the applicable federal and state laws and regulations governing  
21 pharmacy, including regulations established by the board or by any other state or  
22 federal regulatory agency.”

### 23 REGULATORY PROVISIONS

24 9. California Code of Regulations, title 16, section 1770 provides:

25 “For the purpose of denial, suspension, or revocation of a personal or  
26 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
27 Business and Professions Code, a crime or act shall be considered substantially  
28 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.”

### 19 DRUG DEFINITIONS

20 10. Methamphetamine is a Schedule II Controlled Substance pursuant to Health and  
21 Safety Code section 11055 and is a dangerous drug pursuant to Business and Professions Code  
22 section 4022.

### 23 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 24 (Conviction of Substantially Related Crime)

25 11. Respondent's application is subject to denial under section 480, subdivision (a)(1) of  
26 the Code in conjunction with California Code of Regulations, title 16, section 1770 in that  
27 Respondent was convicted of crimes substantially related to the qualifications, functions and  
28 duties of a pharmacy technician, as follows:

1           12. On or about April 29, 2002, Respondent pled guilty to and was convicted of one  
2 misdemeanor count of violating Penal Code section 243(e)(1) [battery of spouse] in the criminal  
3 proceeding entitled *The People of the State of California v. Carlos Solano* (Super. Ct. of  
4 California, County of Los Angeles, 2002, Case No. 2FC00204). As part of the plea, Respondent  
5 was ordered to enroll in the Kaiser Mental Health Program. On or about June 19, 2002, the court  
6 ordered Respondent to serve sixty (60) days in Los Angeles County Jail and placed Respondent  
7 on probation for three (3) years, with terms and conditions.

8           13. On or about October 16, 2002, Respondent pled nolo contendere to and was  
9 convicted of one misdemeanor count of violating Vehicle Code section 12500(a) [drive with  
10 suspended license] in the criminal proceeding entitled *The People of the State of California v.*  
11 *Carlos Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2002, Case No.  
12 2SM03064). The court ordered Respondent to serve 4 days in Los Angeles County Jail and  
13 placed Respondent on probation for one (1) year, with terms and conditions.

14           14. On or about July 7, 2003, Respondent pled nolo contendere to and was convicted of  
15 one misdemeanor count of violating Penal Code section 243(e)(1) [battery of spouse] in the  
16 criminal proceeding entitled *The People of the State of California v. Carlos Kyan Solano* (Super.  
17 Ct. of California, County of Los Angeles, 2003, Case No. 3FC00254). The court ordered  
18 Respondent to serve thirty (30) days in Los Angeles County Jail and placed Respondent on  
19 probation for three (3) years, with terms and conditions.

20           15. On or about February 9, 2004, Respondent pled nolo contendere to and was convicted  
21 of one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal  
22 proceeding entitled *The People of the State of California v. Carlos Kyan Solano* (Super. Ct. of  
23 California, County of Los Angeles, 2003, Case No. 3EL10305). The court ordered Respondent to  
24 serve 6 days in Los Angeles County Jail and placed Respondent on probation for a period of  
25 twelve (12) months, with terms and conditions.

26           16. On or about December 2, 2010, Respondent pled nolo contendere to and was found  
27 guilty of one misdemeanor count of violating Health and Safety Code section 11377(a)  
28 [possession of controlled substance] in the criminal proceeding entitled *The People of the State of*

1 *California v. Carlos-Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2010, Case  
2 No. ORI05379). The court placed Respondent on probation for a period of 1 year under the terms  
3 and conditions of Proposition 36. On or about July 25, 2011, the court revoked Respondent's  
4 probation, terminated the Proposition 36 program and convicted Respondent. On or about  
5 October 28, 2011, the court sentenced Respondent to 90 days in Los Angeles County Jail and  
6 placed Respondent on probation for three (3) years, with terms and conditions. The  
7 circumstances underlying the conviction are that on or about November 30, 2010, Sheriff's  
8 Officers executed a search warrant on Respondent's vehicle and residence. Sheriff's Officers  
9 found a baggie containing 0.38 grams of suspected methamphetamine in the crotch area of  
10 Respondent's clothing. Sheriff's officers also found a glass pipe, numerous empty Ziploc baggies  
11 and a surveillance camera in Respondent's residence. When Sheriff's Officers contacted  
12 Respondent, he stated "I've been using meth for years but I'm not a dealer."

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Act Involving Dishonesty, Fraud or Deceit)**

15 17. Respondent's application is subject to denial under section 480, subdivision (a)(2) of  
16 the Code in that Respondent committed acts involving dishonesty, fraud or deceit with the intent  
17 to substantially benefit himself when he committed theft. On or about February 9, 2004,  
18 Respondent was criminally convicted of this charge. The criminal conviction is described in  
19 more particularity in paragraph 15 above, inclusive and hereby incorporated by reference.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Acts Constituting Grounds for Discipline of Licensee)**

22 18. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
23 the Code in that Respondent committed acts constituting grounds for discipline of a licensee, as  
24 follows:

25 19. Respondent was convicted of crimes substantially related to the qualifications,  
26 functions and duties of a pharmacy technician in violation of section 490 and section 4301,  
27 subdivision (1) of the Code in conjunction with California Code of Regulations, title 16, section  
28

1 1770. The criminal convictions are described in more particularity in paragraphs 12 through 16  
2 above, inclusive and hereby incorporated by reference.

3 20. Respondent committed an act involving dishonesty when he committed theft in  
4 violation of 4301, subdivision (f) of the Code. On or about February 9, 2004, Respondent was  
5 criminally convicted of this charge. The criminal conviction is described in more particularity in  
6 paragraph 15 above, inclusive and hereby incorporated by reference.

7 21. Respondent committed unprofessional conduct when possessed Methamphetamine  
8 and drug paraphernalia on or about November 30, 2010, in violation of section 4301 of the Code.  
9 The conduct is described in more particularity in paragraph 16 above, inclusive and hereby  
10 incorporated by reference.

11 22. Respondent committed unprofessional conduct he violated California statutes  
12 regulating controlled substances and dangerous drugs in violation of section 4301, subdivision (j)  
13 of the Code. Specifically, on or about December 2, 2010, Respondent was convicted of one  
14 misdemeanor count of violating Health and Safety Code section 11377(a) [possession of  
15 controlled substance]. The conviction is described in more particularity in paragraph 16 above,  
16 inclusive and hereby incorporated by reference.

17 23. Respondent violated provisions of the licensing chapter in violation of section 4301,  
18 subdivision (o) of the Code. The violations are described in more particularity in paragraphs 18  
19 through 22 above, inclusive and hereby incorporated by reference.

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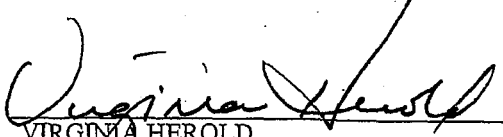
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PRAYER

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

1. Denying the application of Carlos Kyan Solano for a Registration as a Pharmacy Technician;
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/4/13

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

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