

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

In the Matter of the Statement of Issues  
Against:

**ERIKA QUINTON**

Respondent.

Case No. 4840

OAH No. 2013101108

**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 February 18, 2014.

It is so ORDERED on January 17, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

BEFORE THE  
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ERIKA G. QUINTON,

Respondent.

Case No. 4840

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**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on November 26, 2013, in Oakland, California.

Brett A. Kingsbury, Deputy Attorney General, represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Erika G. Quinton represented herself and was present throughout the administrative hearing.

The matter was submitted for decision on November 26, 2013.

**FACTUAL FINDINGS**

1. Virginia Herold brought the Statement of Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy (board).
2. Erika G. Quinton (respondent) submitted an application for a license as a pharmacy technician on November 16, 2012. The board denied the application on May 10, 2013.

*Respondent's Criminal History*

3. On October 11, 2011, in the Superior Court of California, County of Alameda, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content above the legal limit), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years on

terms that included serving four days in county jail, completing a nine-month drinking driver program, not driving with alcohol in her system or without an interlock device on the vehicle, and paying various fines and fees.

The factual circumstances underlying this offense are that on May 21, 2011, respondent was pulled over at approximately 3:00 a.m. for violating Vehicle Code section 21650 (driving on the wrong side of the roadway). Her blood alcohol content was measured at 0.24 percent, three times the legal limit. Respondent was 19 years old at the time of her arrest.

4. On January 24, 2013, in the Superior Court of California, County of Alameda, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content above the legal limit), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for a period of five years on terms that included serving 22 days in county jail through the weekend work program, completing the 18-month drinking driver program, not driving unless properly licensed, and not driving with any alcohol in her system.

The factual circumstances underlying this offense occurred on October 17, 2012, when respondent was pulled over for a dim license plate light. The officer observed the objective signs of alcohol intoxication and arrested respondent. Respondent's breath was measured at 0.14 percent at the scene and at 0.12 and 0.11 percent at the station. Respondent's driver's license was suspended at the time of her arrest due to her prior conviction.

#### *Respondent's Evidence*

5. Respondent is the victim of a dysfunctional childhood home. Her parents were alcoholics and her father was sent to prison for two years. Respondent and her siblings were placed in foster care for a brief period of time. After her father left the family home, respondent's mother stopped drinking and things improved. When respondent's father was released from prison, her parents reunited. This change was very stressful for respondent and she began to drink alcohol to excess.

6. Respondent completed the nine-month drinking driver program and has recently enrolled in the 18-month drinking driver program. Respondent regrets having driven after drinking and reports that she has not consumed any alcohol for approximately nine months.

7. Since February 15, 2013, respondent has been working as a caregiver with Manos Home Care. Her supervisor reports that she is a reliable employee. Respondent has previously worked as a caregiver in various jobs.

8. Respondent is attending Chabot College and is working toward a Bachelor of Science degree. Two of respondent's professors wrote letters indicating that respondent is a good student who reliably attends classes and submits her homework.

9. Respondent completed the pharmacy technician program at Boston Reed College in June 2012. She enjoyed her pharmacy technician studies and her internship in a pharmacy. She hopes to become a pharmacist one day.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the denial of a license of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession.

2. Business and Professions Code section 4300 provides that the board may refuse a license to any applicant who is guilty of unprofessional conduct. Business and Professions Code section 4301, subdivision (k), defines unprofessional conduct as including "the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

3. Business and Professions Code section 4301, subdivision (l), defines unprofessional conduct to include the conviction of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician.

4. Business and Professions Code section 4301, subdivision (h), defines unprofessional conduct to include the use of alcohol to the extent or in a manner as to be dangerous or injurious to oneself or a member of the public.

5. By reason of the matters set forth in Factual Findings 3 and 4, cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, 4300 and 4301, subdivisions (h), (k) and (l).

6. At issue is whether respondent has demonstrated sufficient rehabilitation to receive a pharmacy technician license at this time. Despite a very difficult upbringing, respondent has set impressive goals for her future. She is to be commended on having completed the pharmacy technician program and working towards a Bachelor's degree with an ultimate goal of becoming a pharmacist. Applicant may achieve these goals if she continues to avoid alcohol abuse and remains dedicated to her education. (Factual Findings 4 through 9.)

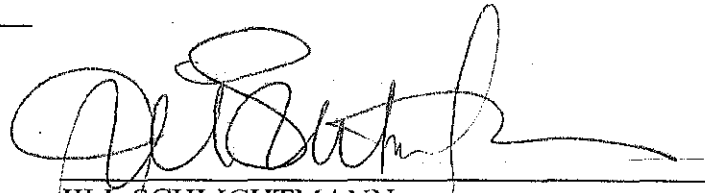
However, respondent has been convicted twice of driving with a blood alcohol content exceeding the legal limit in the past two years. She will remain on probation until

2018, and has just recently enrolled in her 18-month drinking driver program. Insufficient time has elapsed for respondent to demonstrate her rehabilitation. At present, the protection of the public mandates denial of respondent's application.

ORDER

The application of Erika G. Quinton for a pharmacy technician license is denied.

DATED: 12/6/13



JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1192  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
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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:

Case No. 4840

14 **ERIKA G. QUINTON**

Respondent.

**STATEMENT OF ISSUES**

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 November 16, 2012, the Board of Pharmacy, Department of Consumer  
21 Affairs received an application for a pharmacy technician registration from Erika G. Quinton  
22 (Respondent). On or about November 2, 2012, Erika G. Quinton certified under penalty of  
23 perjury to the truthfulness of all statements, answers, and representations in the application. The  
24 Board denied the application on May 10, 2013.

25 JURISDICTION

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

1           4.     Section 4300 of the Code states:

2           ". . . .

3           "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
6 may issue the license subject to any terms or conditions not contrary to public policy, including,  
7 but not limited to, the following:

8           "(1) Medical or psychiatric evaluation.

9           "(2) Continuing medical or psychiatric treatment.

10          "(3) Restriction of type or circumstances of practice.

11          "(4) Continuing participation in a board-approved rehabilitation program.

12          "(5) Abstention from the use of alcohol or drugs.

13          "(6) Random fluid testing for alcohol or drugs.

14          "(7) Compliance with laws and regulations governing the practice of pharmacy.

15          "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
16 certificate of licensure for any violation of the terms and conditions of probation. Upon  
17 satisfactory completion of probation, the board shall convert the probationary certificate to a  
18 regular certificate, free of conditions.

19          "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
20 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
21 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
22 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
23 Procedure."

24          5.     Section 118(a) of the Code states:

25          "The withdrawal of an application for a license after it has been filed with a board in the  
26 department shall not, unless the board has consented in writing to such withdrawal, deprive the  
27 board of its authority to institute or continue a proceeding against the applicant for the denial of  
28

1 the license upon any ground provided by law or to enter an order denying the license upon any  
2 such ground."

3 6. Section 4301 of the Code states:

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

7 ". . . .

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

13 ". . . .

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

17 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or  
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
25 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the



1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment.

6 7. Section 480 of the Business and Professions Code provides, in pertinent part, that a  
7 board may deny a license if the applicant has been convicted of a crime substantially related to the  
8 qualifications, functions or duties of the business or profession for which application is made, has  
9 committed any act involving dishonesty, fraud or deceit, has committed any act which if done by  
10 a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a  
11 false statement of fact required to be revealed in the application.

12 FIRST CAUSE FOR DENIAL OF APPLICATION

13 (Criminal Convictions)

14 8. Respondent's application is subject to denial under sections 480, 4301(k), and 4301(l)  
15 of the Code in that she was convicted of a crime substantially related to the duties, functions, or  
16 qualifications of a pharmacy technician. The circumstances are as follows:

17 9. On or about October 11, 2011, in the Superior Court of California, County of  
18 Alameda, in the case entitled *People v. Erika Georgena Quinton*, Case # 435851, Respondent  
19 pled no contest to and was convicted of violating California Vehicle Code section 23152(b)  
20 (driving with blood alcohol concentration greater than .08%), a misdemeanor, with an  
21 enhancement for blood alcohol concentration greater than .15%. The circumstances were that on  
22 May 21, 2011, Respondent drove a vehicle while heavily intoxicated and was arrested.

23 10. On or about January 24, 2013, in the Superior Court of California, County of  
24 Alameda, in the case entitled *People v. Erika Georgena Quinton*, Case # 247896, Respondent  
25 pled no contest to and was convicted of violating California Vehicle Code section 23152(b)  
26 (driving with blood alcohol concentration greater than .08%), a misdemeanor, with one prior  
27 offense. The circumstances were that on or around October 17, 2012, while Respondent was  
28 driving on a suspended license without the required court-ordered interlock device, she was pulled

1 over for a missing taillight and was found to be intoxicated, registering a .14% blood-alcohol  
2 concentration when tested.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (Dangerous Use of Alcohol)

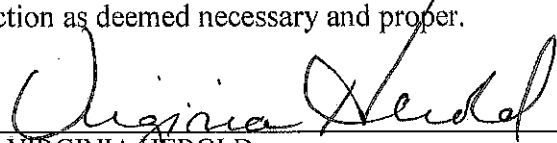
5 11. Respondent's application is subject to denial under section 4301(h) of the Code in that  
6 Respondent used alcohol in the manner or to an extent that was dangerous to herself, to another,  
7 or to the public. The circumstances are described above in the First Cause for Denial of  
8 Application.

9 PRAYER

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

- 12 1. Denying the application of Erika G. Quinton for a Pharmacy Technician Registration;
- 13 2. Taking such other and further action as deemed necessary and proper.

14 DATED: 9/6/13



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

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