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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:

14 **EDGAR ACEVEDO**
15 **10484 Valley Blvd. #2**
16 **El Monte, CA 91731**
17 **Pharmacy Technician Registration**

18 Respondent.

Case No. 4845

OAH No. 2013120645

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

19 **FINDINGS OF FACT**

20 1. On or about October 21, 2013, Complainant Virginia K. Herold, in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy ("Board"), filed
22 Statement of Issues No. 4845 against Edgar Acevedo ("Respondent") before the Board.

23 2. On or about December 13, 2012, Respondent filed an application dated December 5,
24 2012, with the Board to obtain a Pharmacy Technician Registration.

25 3. On or about April 26, 2013, the Board issued a letter denying Respondent's
26 application for a Pharmacy Technician Registration. On or about June 14, 2013, Respondent
27 appealed the Board's denial of his application and requested a hearing.

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1 4. On or about November 4, 2013, an employee of the Department of Justice, served by
2 Certified and First Class Mail, a copy of the Statement of Issues No. 4845, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Notice from Respondent/Applicant to
4 Respondent's address on the application form, which was and is 10484 Valley Blvd. #2
5 El Monte, CA 91731. A copy of the Statement of Issues is attached as Exhibit A, and is
6 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 June 14, 2013, 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 June 23, 2014. 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
 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
 may nevertheless grant a hearing.

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

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

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

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Edgar Acevedo has subjected his application for a Pharmacy Technician Registration to denial.

2. Service of Statement of Issues No. 4845 and related documents was proper and in accordance with the law.

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

4. The Board is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues. Respondent's application is subject to denial under sections Business & Professions Code section 480, subdivision (a)(1), in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician; and further, Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit, in violation of Code section 4301, subdivision (f). Respondent's application is also subject to denial under Code sections 4301, subdivision (p) and 480, subdivision (a)(3), in that Respondent committed acts which if done by a licentiate of the business and profession in question, constitutes grounds for discipline of a license. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of Code sections 4031, subdivision (l), and 490, in conjunction with California Code of Regulations, Title 16, section 1770.

a. On or about March 26, 2008, Respondent was convicted of one felony count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly weapon] and one felony count of Penal Code section 594.7 [vandalism with priors] in the criminal proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles County, 2006, No. KA081796). The Court sentenced Respondent to serve 365 days in Los Angeles County Jail and placed him on 3 years formal probation, with terms and conditions.

b. On or about June 19, 2007, Respondent was convicted of one misdemeanor count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly weapon] in the

1 criminal proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles County,
2 2007, No. 7RI03177). The Court sentenced Respondent to serve 90 days in Los Angeles County
3 Jail.

4 c. On or about January 24, 2007, Respondent was convicted of one felony count of
5 violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled
6 *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles County, 2007, No. KA077493). The
7 Court sentenced Respondent to serve 180 days in Los Angeles County Jail and placed him on 3
8 years probation, with terms and conditions.

9 d. On or about June 27, 2006, Respondent was convicted of one misdemeanor count of
10 violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled
11 *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No. 6RI02801). The Court
12 sentenced Respondent to serve 45 days in Los Angeles County Jail and placed him on 3 years
13 probation, with terms and conditions.

14 e. On or about June 27, 2006, Respondent was convicted of one misdemeanor count of
15 violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled
16 *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No. 6RI03833). The Court
17 sentenced Respondent to serve 45 days in Los Angeles County Jail and placed him on 3 years
18 probation, with terms and conditions.

19 f. On or about April 26, 2006, Respondent was convicted of one misdemeanor count of
20 violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by
21 weight, of alcohol in his blood] in the criminal proceeding entitled *People v. Edgar Salazar*
22 *Acevedo* (Super. Ct. Los Angeles County, 2006, No. 6RI02044). The Court placed Respondent
23 on 3 years probation, with terms and conditions.

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ORDER

IT IS SO ORDERED that the application of Respondent Edgar Acevedo is hereby denied.

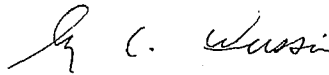
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant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

This Decision shall become effective on October 20, 2014.

It is so ORDERED September 19, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STAN C. WEISSER
Board President

DOJ docket number:LA2013509897
51540355.DOC

Attachment:

Exhibit A: Statement of Issues No.4845

Exhibit A
Statement of Issues No. 4845

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
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5 Los Angeles, CA 90013
Telephone: (213) 897-5794
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**

12 In the Matter of the Statement of Issues
Against:

Case No. 4845

13 **EDGAR ACEVEDO**

STATEMENT OF ISSUES

14 Respondent.

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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 December 13, 2012, the Board of Pharmacy ("Board") received an
21 application for Pharmacy Technician Registration from Edgar Acevedo ("Respondent"). On or
22 about December 5, 2012, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 April 26, 2013.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Code section 480 states, in pertinent part:

"(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.

....

"(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."

5. Code section 490 states, in pertinent part:

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

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

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

11 6. Code section 4300 provides in pertinent part that every license issued by the Board is
12 subject to discipline, including suspension or revocation.

13 7. Code section 4301 states, in pertinent part:

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

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

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

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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 or
9 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.

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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."

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1 f. The circumstances surrounding the conviction are that on or about December 24,
2 2006, Respondent was arrested for vandalizing the veterans' memorial sign at Santa Anita and
3 Valley Blvd. in El Monte, CA.

4 g. On or about June 27, 2006, after pleading nolo contendere, Respondent was convicted
5 of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
6 criminal proceeding entitled *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
7 6RI02801). The Court sentenced Respondent to serve 45 days in Los Angeles County Jail and
8 placed him on 3 years probation, with terms and conditions

9 h. The circumstances surrounding the conviction are that on or about March 13, 2006,
10 Respondent was arrested for writing graffiti on a stop sign.

11 i. On or about June 27, 2006, after pleading nolo contendere, Respondent was convicted
12 of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
13 criminal proceeding entitled *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
14 6RI03833). The Court sentenced Respondent to serve 45 days in Los Angeles County Jail and
15 placed him on 3 years probation, with terms and conditions

16 j. The circumstances surrounding the conviction are that on or about June 24, 2006,
17 Respondent was observed by two officers with the El Monte Police Department marking a school
18 sign with a marker.

19 k. On or about April 26, 2006, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
21 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
22 proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
23 6RI02044). The Court placed Respondent on 3 years probation, with terms and conditions.

24 l. The circumstances surrounding the conviction are that on or about February 20, 2006,
25 during a traffic stop by the El Monte Police Department, Respondent was contacted. While
26 speaking to Respondent the officer detected an odor of alcohol emitting from his breath. When
27 asked to step out of the car, Respondent had to lean on the door of the vehicle to regain his
28 balance. During a search of his person, the officer found a full 12 ounce beer bottle in the front

1 portion of Respondent's pants. Respondent submitted to a breath test that resulted in a breath-
2 alcohol content level of 0.11% on the first and second reading.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Acts Warranting Suspension or Revocation of Licensure)**

5 10. Respondent's application is subject to denial under Code sections 4301, subdivision
6 (p) and 480, subdivision (a)(3), in that Respondent committed acts which if done by a licentiate of
7 the business and profession in question, constitutes grounds for discipline of a license, as follows:

8 a. Respondent was convicted of crimes substantially related to the qualifications,
9 functions, or duties of a pharmacy technician which to a substantial degree evidence his present or
10 potential unfitness to perform the functions authorized by his license in a manner consistent with
11 the public health, safety, or welfare, in violation of Code sections 4031, subdivision (l), and 490,
12 in conjunction with California Code of Regulations, Title 16, section 1770. Complainant refers
13 to, and by this reference incorporates, the allegations set forth above in paragraph 9,
14 subparagraphs (a), (c), (e), (g), (i), and, (k), inclusive, as though set forth fully.

15 b. Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit, in
16 violation of Code section 4301, subdivision (f). Complainant refers to, and by this reference
17 incorporates, the allegations set forth above in paragraph 9, subparagraphs (b), (f), (h), and (j),
18 inclusive, as though set forth fully.

19 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
20 injurious to himself, another person, or the public, in violation of Code section 4301, subdivision
21 (h). Complainant refers to, and by this reference incorporates, the allegations set forth above in
22 paragraph 9, subparagraph (l), as though set forth fully.

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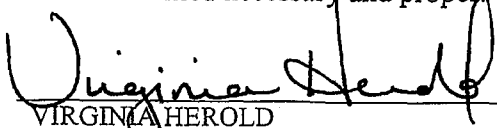
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PRAYER

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 Edgar Acevedo for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/13


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

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