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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:

DANA MARIE TELLEZ
9976 Dauntless Street
San Diego, CA 92126
Registered Pharmacy Technician

Respondent.

Case No. 4946
OAH No. 2014061097
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about April 8, 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. 4946 against Dana Marie Tellez (Respondent) before the Board of Pharmacy.
2. On or about February 6, 2013, Respondent filed an application dated January 31, 2013, with the Board of Pharmacy to obtain a Registration as a Pharmacy Technician.
3. On or about June 19, 2013, the Board issued a letter denying Respondent's application for a Registration as a Pharmacy Technician. On or about August 7, 2013, Respondent appealed the Board's denial of her application and requested a hearing.

1 4. On or about April 24, 2014, an employee of the Department of Justice, served by
2 Certified Mail a copy of the Statement of Issues No. 4946, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7,
4 to Respondent's address on the application form, which was and is 9976 Dauntless Street
5 San Diego, CA 92126. 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 August 7, 2013, Respondent appealed the denial of her 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 her that an administrative hearing in this matter was
12 scheduled for March 5, 2015. 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 Dana Marie Tellez has subjected
2 her application for a Registration as a Pharmacy Technician to denial.

1 2. Service of Statement of Issues No. 4946 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. First cause for denial of application. That cause states that "Respondent's
7 application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code
8 in that she was convicted of a crime that is substantially related to the qualifications, duties and
9 functions of a registered pharmacy technician," to wit: Respondent was convicted of Driving
10 Under the Influence on September 1, 2010.

11 b. Second cause for denial of application. That cause states that "Respondent's
12 application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code
13 in that she was convicted of a crime that is substantially related to the qualifications, duties and
14 functions of a registered pharmacy technician," to wit: Respondent was convicted of Driving
15 Under the Influence on August 1, 2012.

16 c. Third cause for denial of application. That cause states that "Respondent's
17 application is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that she
18 used alcohol in a manner dangerous or injurious to herself or others, which would be a ground for
19 discipline for a registered pharmacy technician under section 4301, subdivision (h) of the
20 Code...."

21 d. Fourth cause for denial of application. That cause states that "Respondent's
22 application is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that she
23 was convicted in two separate cases on charges involving the consumption of alcoholic
24 beverages, which would be a ground for discipline for a registered pharmacy technician under
25 section 4301, subdivision (k) of the Code"

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ORDER

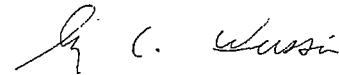
IT IS SO ORDERED that the application of Respondent Dana Marie Tellez is hereby denied.

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 April 24, 2015.

It is so ORDERED on March 25, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STAN C. WEISSER
Board President

DOJ docket number:SD2013705996
71041477.DOC

Attachment:

Exhibit A: Statement of Issues No.4946

Exhibit A

Statement of Issues No. 4946

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2 ALFREDO TERRAZAS
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Attorneys for Complainant

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

11 In the Matter of the Statement of Issues
12 Against:
13 **DANA MARIE TELLEZ**
14 **Applicant for Registration as a**
15 **Pharmacy Technician**
16 Respondent.

Case No. 4946

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about February 6, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Registration as a Pharmacy Technician from Dana Marie
24 Tellez (Respondent). On or about January 31, 2013, Dana Marie Tellez certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on June 19, 2013.
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JURISDICTION

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

4. Section 4300, subdivision (c) of the Code states "the board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a) .

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(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.

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

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1 (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.

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

4 (b) Notwithstanding any other provision of this code, no person shall be
5 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
6 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
7 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.

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

10 7. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to
12 evaluate the rehabilitation of a person when:

13 (a) Considering the denial of a license by the board under Section 480; or

14 (b) Considering suspension or revocation of a license under Section 490.

15 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

16 8. Section 493 of the Code states:

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

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

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9. Section 4301 of the Code states:

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

....

(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.

....

(k) 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.

(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 States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

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

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769 states:

3 (a) When considering the denial of a facility or personal license under Section 480
4 of the Business and Professions Code, the board, in evaluating the rehabilitation of the
5 applicant and his present eligibility for licensing or registration, will consider the following
6 criteria:

7 (1) The nature and severity of the act(s) or offense(s) under consideration as
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
10 consideration as grounds for denial under Section 480 of the Business and Professions
11 Code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
13 to in subdivision (1) or (2).

14 (4) Whether the applicant has complied with any terms of parole, probation,
15 restitution or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

17

18 11. California Code of Regulations, title 16, section 1770 states:

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

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 **(September 1, 2010 Criminal Conviction for Driving With Alcohol Concentration of 0.08%
27 or More on July 20, 2010)**

28 12. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
and (a)(3)(A) of the Code in that she was convicted of a crime that is substantially related to the
qualifications, duties and functions of a registered pharmacy technician and would be a ground for
discipline for a registered pharmacy technician under section 4301, subdivision (l) of the Code.

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1 13. On or about September 1, 2010, in a criminal proceeding entitled *People of the State*
2 *of California v. Dana M. Tellez* in the Superior Court of California, County of San Diego, Case
3 Number M114516, Respondent was convicted on her plea of guilty of violating Vehicle Code
4 section 23152(b) (driving with a blood alcohol concentration of 0.08% or more [0.20% BAC]), a
5 misdemeanor. As a result of a plea bargain, a count for violating Vehicle Code section 23152(a)
6 (DUI), a misdemeanor, was dismissed.

7 14. As a result of the conviction, the Court placed Respondent on five years summary
8 probation and ordered her to pay various fines and fees, and serve 10 days in the Public Service
9 Program (PSP), with one day credit for time served. The Court also ordered the standard alcohol
10 conditions per Vehicle Code section 23600, and ordered her to enroll in and complete a 9-month
11 First Offender Program and a MADD Impact Panel. On June 10, 2011, Respondent's probation
12 was revoked for failure to complete the PSP and on June 16, 2011, a warrant was issued for her
13 arrest. On June 28, Respondent appeared before the Court, her probation was reinstated, and
14 Respondent was ordered to serve 30 days of additional time in the PSP, stayed pending successful
15 completion of probation, and the Court ordered her to complete 7 remaining days in the PSP.

16 15. The circumstances surrounding the conviction are that on July 20, 2010, at
17 approximately 10:50 p.m., San Diego Police Department Officers responded to a call of a
18 collision. Upon the Officers' arrival, they determined one vehicle had collided with two parked
19 vehicles. Officers made contact with the driver of the vehicle that caused the accident
20 (Respondent) and smelled the odor of an alcoholic beverage emitting from her breath and person.
21 Officers had Respondent perform a series of field sobriety tests which she failed. Respondent was
22 arrested and transported to Headquarters where she provided two breath samples at 11:58 p.m.
23 and 12:00 a.m., which registered a blood alcohol concentration of 0.21% and 0.20%, respectively.
24 Respondent was then transported to Las Colinas County Jail.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol in a Manner Dangerous or Injurious to Self or Others)**

3 20. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
4 of the Code in that she used alcohol in a manner dangerous or injurious to herself or others, which
5 would be a ground for discipline for a registered pharmacy technician under section 4301,
6 subdivision (h) of the Code, as is more fully detailed at paragraphs 12-19, above, which are
7 incorporated herein by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

10 21. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
11 of the Code in that she was convicted in two separate cases on charges involving the consumption
12 of alcoholic beverages, which would be a ground for discipline for a registered pharmacy
13 technician under section 4301, subdivision (k) of the Code, as is more fully detailed at paragraphs
14 12-19, above, which are incorporated here by reference.

15 **PRAYER**

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

- 18 1. Denying the application of Dana Marie Tellez for a Pharmacy Technician Registration;
19 2. Taking such other and further action as deemed necessary and proper.

20 DATED: _____

4/8/14

Virginia Herold

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

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