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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 **KYLE JAMES GALLAGHER**

15 **Applicant for Pharmacy Technician License**

16 Respondent.

Case No. 5310

OAH No. 2015041146

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about January 19, 2015, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Statement of Issues No. 5310 against Kyle James Gallagher (Respondent) before the Board of
21 Pharmacy.

22 2. On or about December 3, 2013, Respondent filed an application dated December 2,
23 2013 with the Board of Pharmacy to obtain a pharmacy technician license.

24 3. On or about August 6, 2014, the Board issued a letter denying Respondent's
25 application for a pharmacy technician license. On or about September 7, 2014, Respondent
26 appealed the Board's denial of his application and requested a hearing.

27 4. On or about February 23, 2015, an employee of the Department of Justice served by
28 Certified and First Class Mail a copy of the Statement of Issues No. 5310, Statement to

Respondent, Notice of Defense, and Request for Discovery to Respondent's address on the application form, which was and is 325 Willow Green Court, Vacaville, CA 95687. A copy of the Statement of Issues is attached as exhibit A and is incorporated herein by reference.

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

6. On or about September 7, 2014, Respondent appealed the denial of his application and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's address on the application and it informed him that an administrative hearing in this matter was scheduled for June 30, 2015. Respondent failed to appear at that hearing.

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

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

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

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

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

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kyle James Gallagher has subjected his application for a pharmacy technician license to denial.

2. Service of Statement of Issues No. 5310 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 of Pharmacy is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Conviction of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. (Bus. & Prof. Code §§ 4301, subd. (l), 480, subds. (a)(1) and (a)(3)(B); and Cal. Code Regs., tit. 16, section 1770.)

b. Use of alcohol in a dangerous manner. (Bus. & Prof. Code §§ 4300, subd. (c) and 4301, subd. (h).)

ORDER

IT IS SO ORDERED that the application of Respondent Kyle James Gallagher 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 September 4, 2015.

It is so ORDERED August 5, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Azhar Cortez

By

Amy Gutierrez, Pharm.D.
Board President

DOJ docket number: SF2014409840
41321686.DOC

Attachment:

Exhibit A: Statement of Issues No. 5310

Exhibit A

Statement of Issues No. 5310

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

11 In the Matter of the Statement of Issues
Against:

Case No. 5310

12 **KYLE JAMES GALLAGHER**

STATEMENT OF ISSUES

13 **Applicant for Pharmacy Technician License**

14 Respondent.
15

16
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 December 3, 2013, the Board of Pharmacy received an application for
22 registration as a pharmacy technician from Kyle James Gallagher (Respondent). On or about
23 December 2, 2013, Respondent certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 August 6, 2014.

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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 (Code) unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c) of the Code states, in pertinent part:

"The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be 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.

. . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter."

6. Section 480 of the Code 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.

1 ...

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

5 ...”

6 7. California Code of Regulations, title 16, section 1770, states:

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

13 **FACTUAL BACKGROUND**

14 8. On or about February 5, 2012, a police officer with the Vacaville Police Department
15 was dispatched to Respondent’s residence based on the report of a battery in progress. When the
16 officer arrived at the scene and met with Respondent he detected the strong odor of an alcoholic
17 beverage about Respondent’s person. Respondent told the officer that he had pushed his mother
18 and that he had had a considerable amount to drink. Respondent’s mother later placed
19 Respondent under citizen’s arrest.

20 9. On or about September 3, 2014, in a criminal proceeding entitled *People v. Kyle*
21 *James Gallagher*, Case Number FCR299658, in Solano County Superior Court, Respondent was
22 convicted by his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b)
23 (driving while having a 0.08% or higher blood alcohol), a misdemeanor. Imposition of sentence
24 was suspended and Respondent was ordered to serve three (3) years probation and pay a fine and
25 fees. The circumstances of Respondent’s conviction are as follows:

26 a. On or about January 22, 2013, Respondent, while driving his vehicle, collided with
27 another vehicle in the area of Ulatis Drive at Leisure Town Road in Vacaville, California, causing
28 minor damage to that vehicle. After the accident Respondent fled the scene without exchanging

1 information with the driver of the damaged vehicle. When police officers with the Vacaville
2 Police Department responded to Respondent's residence after the incident, Respondent told one
3 of the officers that he had been drinking all day. Respondent was then arrested for driving under
4 the influence of alcohol. A blood sample taken from Respondent on January 22, 2013 indicated
5 that his blood alcohol count was 0.37%.

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(Conviction of Substantially Related Crime)**

8 10. Respondent's application is subject to denial under the following section(s) of the
9 Code: 480, subdivision (a)(1); 480, subdivision (a)(3)(B) by reference to 4301, subdivision (l),
10 4300, subdivision (c), and California Code of Regulations, title 16, section 1770, for conviction of
11 a substantially related crime, in that on or about September 3, 2014, as described above in
12 paragraph 9, Respondent suffered a substantially related conviction.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Use of Alcohol in a Dangerous Manner)**

15 11. Respondent's application is subject to denial under sections 4300, subdivision (c) and
16 4301, subdivision (h) of the Code in that on or about February 5, 2012 and January 22, 2013, as
17 described above in paragraphs 8 and 9.a., Respondent used alcohol in a dangerous manner.

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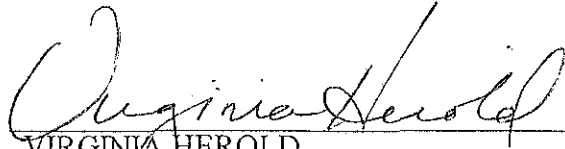
PRAYER

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 Kyle James Gallagher to be a pharmacy technician;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

1/19/15



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

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