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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:
CESAR GONZALEZ
Pharmacy Technician Registration
Respondent.

Case No. 5359
OAH No. 201512012
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about October 20, 2015, 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. 5359 against Cesar Gonzalez (Respondent) before the Board of Pharmacy.
2. On or about February 11, 2014, Respondent filed an application dated February 5, 2014, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.
3. On or about October 13, 2014, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about November 14, 2014, Respondent appealed the Board's denial of his application and requested a hearing.
4. On or about November 12, 2015, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 5359, Statement to Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5,

1 11507.6, and 11507.7, and Notice from Respondent/Applicant to Respondent's address on the
2 application form, which was and is 5154 Almaden Drive Los Angeles, CA 90042. A copy of the
3 Statement of Issues is attached as exhibit A, and is incorporated herein by reference.

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

6 6. On or about November 14, 2014, Respondent appealed the denial of his application
7 and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
8 address on the application and it informed him that an administrative hearing in this matter was
9 scheduled for August 18, 2016. Respondent failed to appear at that hearing.

10 7. Government Code section 11506(c) states, in pertinent part:

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

16 8. California Government Code section 11520(a) states, in pertinent part:

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

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

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Cesar Gonzalez has subjected his
27 application for a Pharmacy Technician Registration to denial.

28 2. Service of Statement of Issues No. 5359 and related documents was proper and in
accordance with the law.

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

///

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

3 (a) Business and Professions Code section 480, subdivision (a)(1), in that Respondent
4 was convicted of substantially related crimes, as follows:

5 (i) On or about June 29, 2009, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 415 [disturbing the peace]
7 and one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving
8 without a license] in the criminal proceeding entitled *The People of the State of California v.*
9 *Cesar Gonzalez* (Super. Ct. L.A. County, 2009, No. 9GN00327).

10 (ii) On or about April 17, 2014, after pleading nolo contendere, Respondent was
11 convicted of one felony count of violating Penal Code section 245, subdivision (a)(4) [assault
12 with force likely to produce bodily injury] in the criminal proceeding entitled *The People of the*
13 *State of California v. Cesar Gonzalez* (Super. Ct. L.A. County, 2014, No. BA419485).

14 (b) Business and Professions Code sections 4301, subdivision (p) and 480, subdivision
15 (a)(3), in that Respondent committed acts which if done by a licentiate of the business and
16 profession in question would be grounds for suspension or revocation of his license.

17 (c) Business and Professions Code section 480, subdivision (c), in that on or about
18 February 5, 2014, Respondent knowingly made a false statement of fact by failing to disclose his
19 June 26, 2009 conviction and his April 22, 2009 alcohol related infraction on his application for
20 licensure.

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ORDER

IT IS SO ORDERED that the application of Respondent Cesar Gonzalez 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 December 29, 2016.

It is so ORDERED on November 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

LA2015500020
52282024.DOC
Jz(11/2/16)

Attachment:

Exhibit A: Statement of Issues No. 5359

Exhibit A

Statement of Issues No. 5359

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 KRITHIKA VASUDEVAN
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5 Los Angeles, CA 90013
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Attorneys for Complainant
7

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. 5359

12 **CESAR GONZALEZ**

STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

14 Respondent.
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 February 11, 2014, the Board of Pharmacy ("Board") received an
21 application for a Pharmacy Technician Registration from Cesar Gonzalez ("Respondent"). On or
22 about February 5, 2014, 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 October 13, 2014.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states, in pertinent part:

2

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

8 **STATUTORY AND REGULATORY PROVISIONS**

9 5. Section 480 of the Code states, in pertinent part:

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

12 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
13 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
14 board is permitted to take following the establishment of a conviction may be taken when the
15 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
16 an order granting probation is made suspending the imposition of sentence, irrespective of a
17 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

18

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

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

24

25 "(d) A board may deny a license regulated by this code on the ground that the applicant
26 knowingly made a false statement of fact that is required to be revealed in the application for the
27 license."

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1 ///

2 6. Section 4301 states, in pertinent part:

3 "The board shall take action against any holder of a license who is guilty of unprofessional
4 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

5 Unprofessional conduct shall include, but is not limited to, any of the following:

6

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

10

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

16

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

19

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9

10 "(p) Actions or conduct that would have warranted denial of a license."

11

12 7. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

19 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

20 8. Marijuana, hashish and tetrahydrocannabinols (concentrated marijuana) are
21 hallucinogenic Schedule I controlled substances under State and federal law. (Health & Safety
22 Code § 11054, subs. (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is also a dangerous drug as
23 defined in Code section 4022. Possession of a controlled substance is illegal under federal law
24 (21 U.S.C. § 844), and the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) prohibits a person
25 from possessing any controlled substance without a valid prescription. (Bus. & Prof. Code, §
26 4060.)

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Substantially Related Crimes)**

3 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
4 that Respondent was convicted of substantially related crime, as follows:

5 a. On or about June 29, 2009, after pleading nolo contendere, Respondent was convicted
6 of one misdemeanor count of violating Penal Code section 415 [disturbing the peace] and one
7 misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without a
8 license] in the criminal proceeding entitled *The People of the State of California v. Cesar*
9 *Gonzalez* (Super. Ct. L.A. County, 2009, No. 9GN00327). The Court placed Respondent on 24
10 months probation, and ordered him to complete five (5) days of CalTrans work.

11 b. The circumstances surrounding the conviction are that on or about January 19, 2009,
12 Glendale Police Department officers made a traffic stop and contacted the driver, Respondent.
13 When asked for his driver's license, Respondent responded to the officer that he did not have one
14 because it was suspended. The officer asked to search Respondent and his vehicle, and
15 Respondent consented. The officer found stickers in Respondent's wallet filled with graffiti
16 called "slap tags," which are stickers that taggers use to quickly deface property. The officer also
17 found the following items in Respondent's vehicle: two sand stone drill bits, a yellow paint
18 marker, a large white paint marker, numerous photos with graffiti on walls, cars, and other
19 properties, white shoe polish, and two books with various graffiti writing inside. The items found
20 in the vehicle are commonly used for vandalism. After the officer confronted Respondent
21 regarding the items, Respondent admitted to using the drill bits on a gas pump to tag his crew's
22 name.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Conviction of Substantially Related Crimes)**

25 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
26 that Respondent was convicted of substantially related crime, as follows:

27 a. On or about April 17, 2014, after pleading nolo contendere, Respondent was
28 convicted of one felony count of violating Penal Code section 245, subdivision (a)(4) [assault

1 with force likely to produce bodily injury] in the criminal proceeding entitled *The People of the*
2 *State of California v. Cesar Gonzalez* (Super. Ct. L.A. County, 2014, No. BA419485). The Court
3 sentenced Respondent to four (4) days in jail, placed him on 36 months of formal probation, and
4 ordered him to complete 60 days of CalTrans work.

5 b. The circumstances surrounding the conviction are that on or about November 28,
6 2013, Respondent and several other men beat and kicked a victim on a sidewalk outside a bar.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Warranting Denial of Licensure)**

9 11. Respondent's application is subject to denial under Code sections 4301, subdivision
10 (p) and 480, subdivision (a)(3), on the grounds of unprofessional conduct, in that Respondent
11 committed acts which if done by a licentiate of the business and profession in question, would be
12 grounds for suspension or revocation of his license as follows:

13 a. On or about June 29, 2009 and April 17, 2014, Respondent was convicted of crimes
14 substantially related to the qualifications, functions, or duties of a pharmacy technician which to a
15 substantial degree evidence his present or potential unfitness to perform the functions authorized
16 by the license in a manner consistent with the public health, safety, or welfare, in violation of
17 Code section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16,
18 section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth
19 above in paragraphs 9 and 10, inclusive, as though fully set forth herein.

20 b. On or about March 22, 2009, Respondent was arrested for violating Penal Code
21 section 488 (petty theft) for stealing from Wal-Mart, in violation of Code section 4301,
22 subdivision (f), as follows:

23 i. On or about March 19, 2009, Respondent and his girlfriend entered Wal-Mart,
24 located at 1340 S. Beach Blvd., La Habra, California. Respondent picked up a DVD, unwrapped
25 the packaging, and it concealed it in his girlfriend's purse. Respondent and his girlfriend walked
26 out of the store with the concealed item. Respondent was stopped by Wal-Mart's loss prevention
27 officer. The loss prevention officer contacted the police. Respondent apologized to the police for
28 his actions. Respondent stated he had taken the items because of greed. Respondent stated he had

1 entered the store with his girlfriend, and they both went their separate ways. Once he was in the
2 electronics department, he viewed several items he wanted and later met up with his girlfriend.
3 He asked his girlfriend to place the items in her purse. Respondent stated he had money to pay for
4 the items, but he felt if he took the items, he would still have the money to spend on other things
5 at a later time.

6 c. On or about April 28, 2008, Respondent illegally possessed a controlled substance
7 and dangerous drug in violation of Code section 4301, subdivision (j), as follows:

8 i. On or about April 22, 2009, after pleading nolo contendere, Respondent was
9 convicted of an infraction of violating Vehicle Code section 23136, subdivision (a) [driver under
10 21 with a BAC of 0.01 or higher] in the criminal proceeding entitled *The People of the State of*
11 *California v. Cesar Gonzalez* (Super. Ct. L.A. County, 2009, No. 9AH0086). The Court
12 sentenced Respondent to pay fines. The circumstances surrounding the conviction are that on or
13 about April 28, 2008, during a driving under the influence checkpoint administered by the
14 Alhambra Police Department, an officer stopped Respondent's vehicle. Upon contact, the officer
15 smelled the odor of marijuana emitting from inside Respondent's vehicle and he noticed
16 Respondent's red eyes and smelled the odor of an alcoholic beverage coming from his breath.
17 When the officer asked if Respondent had any marijuana, Respondent stated yes. The officer
18 asked Respondent for the marijuana and Respondent handed him a clear plastic bag containing a
19 green leafy substance resembling marijuana. During a further investigation, the officers found a
20 container under the front passenger's seat and it contained three small plastic bags containing a
21 green leafy substance resembling marijuana. Respondent submitted to a preliminary alcohol
22 screening test and he blew a result of 0.041% blood alcohol content.

23 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

24 **(Knowingly Made a False Statement of Fact)**

25 12. Respondent's application is subject to denial under Code section 480, subdivision (c),
26 in that on or about February 5, 2014, Respondent knowingly made a false statement of fact by
27 failing to disclose his June 26, 2009 conviction and his April 22, 2009 alcohol related infraction
28

1 on his application for licensure. Respondent falsely answered "No" to the following question on
2 the application for Pharmacy Technician:

3 "Have you ever been convicted of any crime in any state, the USA and its
4 territories, military court or foreign county?"

5 "Check the box next to 'Yes' if, you have ever been convicted or plead guilty
6 to any crime. "Conviction" includes a plea of no contest and any conviction that
7 has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal
8 Code, including infractions, misdemeanor, and felonies. You do not need to report
9 a conviction for an infraction with a fine of less than \$300 unless the infraction
10 involved alcohol or controlled substances. You must, however, disclose any
11 convictions in which you entered a plea on no contest and any convictions that
12 were subsequently set aside pursuant or deferred pursuant to sections 1000 or
13 1203.4 of the Penal Code.

14 "Check the box next to 'NO' if you have not been convicted of a crime.

15 "You may wish to provide the following information in order to assist in the
16 processing of your application: descriptive explanation of the circumstances
17 surrounding the conviction (i.e. dates and location of incident and all
18 circumstances surrounding the incident.) If documents were purged by the
19 arresting agency and/or court, a letter of explanation from these agencies are
20 required.

21 "Failure to disclose a disciplinary action or conviction may result in the
22 license being denied or revoked for falsifying the application. Attach
23 additional sheet if necessary."


24 In addition, Respondent signed his application under penalty of perjury. Complainant refers to,
25 and by this reference incorporates, the allegations set forth in paragraph 9, including all
26 subparagraphs, and paragraph 11, subdivision (c), as though fully set forth herein.

27 PRAYER

28 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 Cesar Gonzalez for a Pharmacy Technician Registration;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/20/15


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