

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

In the Matter of the Statement of Issues
Against:

JUAN JOAQUIN SORIA,

Respondent.

Case No. SI 5409

OAH No. 2015090160

DECISION AFTER REJECTION OF THE PROPOSED DECISION

Administrative Law Judge (ALJ) Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on November 23, 2015, in Oakland, California. Complainant Virginia Herold, Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs, was represented by Joshua A. Room, Supervising Deputy Attorney General. Respondent Juan Joaquin Soria was present and represented himself. The matter was submitted for decision on November 23, 2015. The ALJ issued a Proposed Decision on December 4, 2015.

On March 11, 2016, pursuant to section 11517 of the Government Code, the California State Board of Pharmacy ("Board") issued an Order rejecting the December 4, 2015, Proposed Decision in the above-entitled matter. On April 29, 2016, the parties were notified that the transcript had been received and the deadline for the parties to submit written argument was set for May 31, 2016. Written argument was timely received from complainant. Respondent did not file a written argument.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues this decision.

FACTUAL FINDINGS

1. Complainant Virginia Herold made this statement of issues in her official capacity as the Executive Officer of the California State Board of Pharmacy, Department of Consumer Affairs (Board).

2. On March 13, 2014, respondent submitted a pharmacy technician application to the Board. On January 16, 2015, the Board denied the application and, on February 2, 2015, respondent appealed.

3. On July 10, 2006, respondent was convicted in the Superior Court of California, County of Fresno, pursuant to his plea of no contest, of violating Health and Safety Code section 11377, subdivision (a) (possession of methamphetamine), a felony. Imposition of sentence was suspended, and respondent was placed on formal probation for two years, on terms and conditions which included attending Alcoholics Anonymous or Narcotics Anonymous meetings.

The facts and circumstances of the offense are that on May 18, 2006, respondent was pulled over for a traffic infraction and methamphetamine was found in his vehicle.

On August 10, 2006, respondent was found in violation of probation as a result of a failed drug test and was briefly incarcerated in county jail. During his testimony, respondent at first described the violation of his probation as a result of coming home a half hour late from house arrest. Later, upon cross examination, he explained that when the police came for him, they had him provide a urine sample, and it was too diluted because he had presumably consumed too much water, so it was treated as a fail. Respondent's probation was transferred to Santa Clara County.

In approximately January 2015, the offense was dismissed pursuant to Penal Code section 1203 .4.

4. On October 23, 2007, respondent was convicted in the Superior Court of California, County of Santa Clara, pursuant to his plea of nolo contendere, of violating Penal Code section 459/460, subdivision (b) (second degree burglary), a felony, and Health and Safety Code section 11377, subdivision (a) (possession of methamphetamine), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on formal probation for three years, on terms and conditions which included serving 90 days in jail and attending a substance abuse program.

The facts and circumstances of the offenses are that in February 2007, respondent, working as a temporary employee, forged letters authorizing himself and his friend to use his employer's corporate credit card. The credit card was used to purchase \$3,700 in gift cards from Home Depot. When respondent was arrested on August 28, 2007, he was in possession of methamphetamine.

Respondent was dismissed from probation early. In approximately January 2015, the felony conviction was reduced to a misdemeanor pursuant to Penal Code section 17, and both offenses were dismissed pursuant to Penal Code section 1203.4.

5. Respondent acknowledged his convictions, but denied ever using methamphetamine. He acknowledged on cross examination that on one other occasion in 1998, he had been pulled over, and police found methamphetamine in his car. He stated that in all three instances, he was in possession of someone else's drugs. He completed a court-ordered substance abuse program. Respondent admitted that for many years he hung out with people who used drugs, but stated that he is no longer associating with those people. Respondent admitted forging the letters authorizing him and his friend to use a company credit card. Respondent explained that his former lover, who "ran his life" for 13 years, pressured him into forging the letters and was the one who used the gift cards. Respondent knows that it was a foolish thing to do and he regrets doing it. Respondent has no contact with the former lover. Respondent testified that he is "done" with his former lifestyle of hanging out with a bad crowd and committing crimes. He acknowledged in his opening statements that he had used drugs, but when asked by the ALJ if he had been a drug user, he answered "no."

6. Respondent is currently working three different jobs. He works at an Arco gas station at nights, at a Home Depot store, and at a Banana Republic store. He had to pass a background check before being hired at the two stores. Respondent is trusted with money and financial information at his jobs.

7. Respondent expressed a great deal of frustration about the time and money he has spent trying to obtain his license. He stated that he has been upfront about his convictions and was led to believe that they would not pose a problem. Respondent believes that should his application be denied, he is entitled to be compensated for the money he has spent seeking licensure.

8. Respondent holds an associate's degree in chemistry. He worked in accounting for 17 years.

9. Respondent is 54 years old. He lives in Gilroy with his brother and his brother's family. He hopes to become a pharmacy technician because he wants to serve the community and better himself. If licensed, he would seek employment in a retail pharmacy.

10. Manisha Shafir, a licensed pharmacist and an inspector for the Board, testified that respondent's convictions all raise concerns about respondent's suitability for licensure. Pharmacy technicians have access to controlled substances and there is the potential that they will divert them for their own use or to sell to others. Pharmacy technicians also have access to patients' confidential medical and billing records. In addition, respondent's convictions raise concerns about his trustworthiness, judgment, and potential for erratic or unsafe behavior.

11. In a letter dated August 20, 2014, Tomasito S. Napalan testified that he has known respondent for 30 years. Napalan writes that respondent is a kind and caring soul, and that he and respondent both turned to drugs to soothe the pain of dealing with friends around them dying.

Napalan adds that he and respondent were lucky to get help, and are now clean and sober. Respondent's period of incarceration caused him to turn his life around. Napalan describes respondent as an intelligent, capable, and dedicated man who is active in the community and volunteers consistently. Napalan is proud of respondent's dedication to becoming a pharmacy technician.

12. In a letter dated August 1, 2014, Zenaida Yagen writes that she has known respondent for 29 years. Respondent's sister is married to Yagen's brother. Yagen writes that respondent is kind, generous and has a strong sense of duty to his work, family, and community. Yagen knows that respondent has made wrong decision in the past, but believes that he has huge changes and is striving to be the best person he can be.

13. In a letter dated August 4, 2014, Sandy Soria, respondent's sister-in-law, writes that she has known respondent for more than 25 years. Respondent has lived with her family for the past year and one-half. He worked several part-time jobs while studying for his pharmacy technician license. Soria writes that respondent is bright, talented, personable, detail-oriented, and a quick learner. Respondent helps manage the household and assists the family. Soria believes respondent deserves a second chance.

14. In a letter dated August 12, 2014, Sonya De La Cruz of the US Polo Association writes that she has worked with respondent in a retail store for several months. De La Cruz describes respondent as hard-working, sincere, and committed to his work. De La Cruz adds that respondent has taken responsibility for his setbacks and should be given the opportunity to strive for something better in life.

LEGAL CONCLUSIONS

1. As an applicant for licensure, respondent has the burden of proof. (Gov. Code, § 11504.)

2. Business and Professions Code sections 480, subdivisions (a) (1) and (3), 4300, subdivision (c), and 4301, subdivision (l), provide that the Board may deny an application for a pharmacy technician license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. A crime is substantially related to the qualifications, functions or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's three convictions are all substantially related to the qualifications, functions or duties of a pharmacy technician and each provides cause for denial of respondent's application. Therefore cause exists to deny respondent's application in light of the matters set forth in Findings 3 and 4.

3. Business and Professions Code sections 480, subdivisions (a)(2) and (3), 4300, subdivision (c), and 4301, subdivisions (f) and (g), provide that the Board may deny an application for a pharmacy technician license if the applicant has committed an act of fraud or

dishonesty. Cause exists to deny respondent's application in light of the matters set forth in Finding 4.

4. Business and Professions Code sections 480, subdivision (a)(3), 4300, subdivision (c), and 4301, provide that the Board may deny an application for a pharmacy technician license if the applicant has engaged in unprofessional conduct. Cause exists to deny respondent's application in light of the matters set forth in Findings 3 and 4.

5. The Board has set forth criteria for evaluating the rehabilitation of an applicant for a licensure. (Cal. Code Regs., tit. 16, § 1769.) These criteria include the nature and severity of the offenses, the time that has elapsed, whether the applicant has complied with the terms of probation, and evidence of rehabilitation. Respondent was convicted of two felony offenses and one misdemeanor offense in 2006 and 2007. The burglary offense involved an abuse of his position of trust as an employee, where he used his employer's corporate charge account to steal from his employer. While notable time has elapsed since the convictions occurred, Respondent was in his 40's at the time they occurred, past the age of youthful indiscretions.

Respondent expressed remorse for the burglary conviction, but minimized his role in the drug offenses. He did complete substance abuse treatment and his most recent criminal probation was terminated early. Respondent recently successfully expunged his convictions under Penal Code section 1203.4. He has not been convicted of subsequent offenses during the almost nine years that have passed since his last offenses. Respondent testified that he is not interested in engaging in further criminal activity.

Respondent has presented some of rehabilitation, but did not submit sufficient rehabilitation to warrant a probationary pharmacy technician license. Respondent's convictions are quite serious, and his rehabilitation does not overcome that. Of concern is respondent's minimization of his drug offenses, especially when his own evidence, Mr. Napalan's letter, more directly acknowledges that he had a problem with drugs. Also of concern is his testimony regarding his convictions and his probation revocation, where his testimony of the circumstances of his misconduct are difficult to harmonize.

The Board is guided by principles and statutes that mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Bus. & Prof. Code, §§ 4001.1 and 4313.) Trustworthiness, honesty and the ability to use good judgment are essential qualities in a pharmacy technician. These qualities are significant not only to prevent theft, but also help ensure that, in the event errors are made, they may be immediately identified, acknowledged and corrected. Respondent has not fulfilled his burden to demonstrate that he can practice as a pharmacy technician with safety to the public.

ORDER

The Application of Juan Joaquin Soria for a pharmacy technician license is DENIED.

This Decision shall become effective at 5:00pm on August 29, 2016.

It is so ORDERED on July 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read 'Amy Gutierrez', written over a horizontal line.

By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Statement of
Issues Against:

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Respondent.

Case No. SI 5409

OAH No. 2015090160

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated March 11, 2016. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issues:

1. Whether a license should be issued to respondent even on probationary terms and
2. If a license is issued on probationary terms, whether the proposed terms are both a) adequate to protect the public and b) consistent with the board's disciplinary guidelines or a reasonable deviation from them.

Written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before May 31, 2016. **No new evidence may be submitted.**

IT IS SO ORDERED this 29th day of April, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Statement of
Issues Against:

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Respondent.

Case No. SI 5409

OAH No. 2015090160

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

Although the right to argue is not limited, the board is particularly interested in argument directed to the question whether the proposed disciplinary terms are appropriate.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on March 11, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Statement of
Issues Against:

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Respondent.

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PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on November 23, 2015, in Oakland, California.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, was represented by Joshua A. Room, Supervising Deputy Attorney General.

Respondent Juan Joaquin Soria was present and represented himself.

The matter was submitted for decision on November 23, 2015.

FACTUAL FINDINGS

1. Complainant Virginia Herold made this statement of issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On March 13, 2014, respondent submitted a pharmacy technician application to the Board. On January 16, 2015, the Board denied the application, and on February 2, 2015, respondent appealed.
3. On July 10, 2006, respondent was convicted in the Superior Court of California, County of Fresno, pursuant to his plea of no contest, of violating Health and Safety Code section 11377, subdivision (a) (possession of methamphetamine), a felony. Imposition of sentence was suspended, and respondent was placed on formal probation for

two years, on terms and conditions which included attending Alcoholics Anonymous or Narcotics Anonymous meetings.

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On August 10, 2006, respondent was found in violation of probation and was briefly incarcerated in county jail. Respondent's probation was transferred to Santa Clara County.

In January 2015, the offense was dismissed pursuant to Penal Code section 1203.4.

4. On October 23, 2007, respondent was convicted in the Superior Court of California, County of Santa Clara, pursuant to his plea of nolo contendere, of violating Penal Code section 459-460 subdivision (b) (second degree burglary), a felony, and Health and Safety Code section 11377, subdivision (a) (possession of methamphetamine), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on formal probation for three years, on terms and conditions which included serving 90 days in jail and attending a substance abuse program.

The facts and circumstances of the offenses are that in February 2007, respondent, working as a temporary employee, forged letters authorizing himself and his friend to use his employer's corporate credit card. The credit card was used to purchase \$3,700 in gift cards from Home Depot. When respondent was arrested on August 28, 2007, he was in possession of methamphetamine.

Respondent was dismissed from probation early. In January 2015, the felony conviction was reduced to a misdemeanor pursuant to Penal Code section 17, and both offenses were dismissed pursuant to Penal Code section 1203.4.

5. Respondent acknowledged his convictions, but denied ever using methamphetamine. He stated that in both cases, he was in possession of someone else's drugs. He completed the court-ordered substance abuse program. Respondent admitted that for many years he hung out with people who used drugs, but stated that he is no longer associating with those people. Respondent admitted forging the letters authorizing him and his friend to use a company credit card. Respondent explained that his former lover, who "ran his life" for 13 years, pressured him into forging the letters and was the one who used the gift cards. Respondent knows that it was a foolish thing to do and he regrets doing it. Respondent has no contact with the former lover. Respondent testified that he is "done" with his former lifestyle of hanging out with a bad crowd and committing crimes.

6. Respondent is currently working three different jobs. He works at an Arco gas station at nights, at a Home Depot store, and at a Banana Republic store. He had to pass a background check before being hired at the two stores. Respondent is trusted with money and financial information at his jobs.

7. Respondent expressed a great deal of frustration about the time and money he has spent trying to obtain his license. He stated that he has been upfront about his convictions and was led to believe that they would not pose a problem. Respondent believes that should his application be denied, he is entitled to be compensated for the money he has spent seeking licensure.

8. Respondent holds an associate's degree in chemistry. He worked in accounting for 17 years.

9. Respondent is 54 years old. He lives in Gilroy with his brother and his brother's family. He hopes to become a pharmacy technician because he wants to serve the community and better himself. If licensed, he would seek employment in a retail pharmacy.

10. Manisha Shafir, a licensed pharmacist and an inspector for the Board, testified that respondent's convictions all raise concerns about respondent's suitability for licensure. Pharmacy technicians have access to controlled substances and there is the potential that they will divert them for their own use or to sell to others. In addition, respondent's convictions raise concerns about his trustworthiness, judgment, and potential for erratic or unsafe behavior.

11. In a letter dated August 20, 2014, Tomasito S. Napalan writes that he has known respondent for 30 years. Napalan writes that respondent is a kind and caring soul, and that he and respondent both turned to drugs to soothe the pain of dealing with friends around them dying. Napalan adds that he and respondent were lucky to get help, and are now clean and sober. Respondent's period of incarceration caused him to turn his life around. Napalan describes respondent as an intelligent, capable, and dedicated man who is active in the community and volunteers consistently. Napalan is proud of respondent's dedication to becoming a pharmacy technician.

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13. In a letter dated August 4, 2014, Sandy Soria, respondent's sister-in-law, writes that she has known respondent for more than 25 years. Respondent has lived with her family for the past year and one-half. He worked several part-time jobs while studying for his pharmacy technician license. Soria writes that respondent is bright, talented, personable, detail-oriented, and a quick learner. Respondent helps manage the household and assists the family. Soria believes respondent deserves a second chance.

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La Cruz adds that respondent has taken responsibility for his setbacks and should be given the opportunity to strive for something better in life.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480, subdivisions (a)(1) and (3), 4300, subdivision (c), and 4301, subdivision (l), provide that the Board may deny an application for a pharmacy technician license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. A crime is substantially related to the qualifications, functions or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's three convictions are all substantially related to the qualifications, functions or duties of a pharmacy technician and each provides cause for denial of respondent's application. Therefore, cause exists to deny respondent's application in light of the matters set forth in Findings 3 and 4.

2. Business and Professions Code sections 480, subdivisions (a)(2) and (3), 4300, subdivision (c), and 4301, subdivisions (f) and (g), provide that the Board may deny an application for a pharmacy technician license if the applicant has committed an act of fraud or dishonesty. Cause exists to deny respondent's application in light of the matters set forth in Finding 4.

3. Business and Professions Code sections 480, subdivision (a)(3), 4300, subdivision (c), and 4301, provide that the Board may deny an application for a pharmacy technician license if the applicant has engaged in unprofessional conduct. Cause exists to deny respondent's application in light of the matters set forth in Findings 3 and 4.

4. The Board has set forth criteria for evaluating the rehabilitation of an applicant for a licensure. (Cal. Code Regs., tit. 16, § 1769.) These criteria include the nature and severity of the offenses, the time that has elapsed, whether the applicant has complied with the terms of probation, and evidence of rehabilitation. Respondent was convicted of two felony offenses and one misdemeanor offense in 2006 and 2007. The burglary offense involved an abuse of his position as a temporary employee.

Respondent expressed remorse for the burglary conviction, but minimized his role in the drug offenses. Nonetheless, he completed substance abuse treatment and his most recent probation was terminated early. Respondent has successfully expunged his convictions under Penal Code section 1203.4. He has not committed any subsequent offenses during the almost nine years that have passed since his last offense. Respondent testified persuasively that he is not interested in engaging in further criminal activity.

Respondent has formed new relationships and is no longer associating with drug users. He lives with his family, works hard at several jobs, and has been studying for his pharmacy technician license to better provide for himself. Respondent has presented sufficient evidence of rehabilitation to warrant a probationary pharmacy technician license. In light of respondent's two drug-related offenses, conditions of probation requiring respondent to abstain from controlled substances, to submit to random drug testing, and to be monitored by a work site monitor are necessary to ensure the safety of the public.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a pharmacy technician license shall be issued to respondent Juan Joaquin Soria and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two hours of such occurrence:

- a. an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- c. a conviction of any crime; or
- d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in

writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number SI 5409 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty days of the effective date of this decision, and within fifteen days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number SI 5409 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number SI 5409 in advance of the

respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty days of the effective date of this decision, and within fifteen days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number SI 5409 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

6. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

7. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the board within ten days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

9. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

10. Abstain From Drugs

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or

use of controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

11. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

12. Work Site Monitor

Within ten days of commencing employment as a pharmacy technician, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not abstained from controlled substances, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a specific number of hours per calendar month to be determined by the Board or its designee. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician in California for the specific minimum number of hours per calendar month determined by the Board, respondent must notify the Board in writing within ten days of cessation of work and must further notify the Board in writing within ten days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six months.

"Cessation of work" means calendar month during which respondent is not working as a pharmacy technician, as defined in Business and Professions Code section 4115 for at least the minimum hours determined by the board. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions

Code section 4115 for at least the minimum number of hours determined by the Board.

14. Violation of Probation

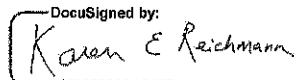
If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: December 4, 2015

DocuSigned by:

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Statement of Issues Against:

Case No. SI 5409

11 **JUAN JOAQUIN SORIA**

12 **Applicant for Pharmacy Technician License**

STATEMENT OF ISSUES

13 Respondent.
14

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 March 13, 2014, the Board of Pharmacy received a Pharmacy Technician
21 Application from Juan Joaquin Soria (Respondent). On or about March 13, 2014, Respondent
22 certified under penalty of perjury as to the truthfulness of all statements, answers, and
23 representations in the Application. The Board denied the Application on January 16, 2015.

24
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 (Code) unless otherwise indicated.

1 STATUTORY AND REGULATORY PROVISIONS

2 4. Section 480 of the Code states, in pertinent part:

3 “(a) A board may deny a license regulated by this code on the grounds that the applicant
4 has one of the following:

5 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
6 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
7 provisions of Section 1203.4 of the Penal Code.

8 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
9 benefit himself or another, or substantially injure another; or

10 “(3) Done any act which if done by a licentiate of the business or profession in question,
11 would be grounds for suspension or revocation of license.

12 “The board may deny a license pursuant to this subdivision only if the crime or act is
13 substantially related to the qualifications, functions or duties of the . . . [license].”

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

15 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
16 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
17 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
18 may issue the license subject to any terms or conditions not contrary to public policy”

19 6. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is
20 defined to include, but not be limited to, any of the following:

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

24 (g) Knowingly making or signing any certificate or other document that falsely represents
25 the existence or nonexistence of a state of facts.

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

28 ///

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

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

8
9
10 FIRST CAUSE FOR DENIAL OF APPLICATION

11 (Conviction of Substantially Related Crime(s))

12 8. Respondent's application is subject to denial under the following section(s) of the
13 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
14 California Code of Regulations, title 16, section 1770, for conviction of substantially related
15 crimes, based on the following two (2) substantially related convictions.

16 9. On or about July 10, 2006, in the criminal case *People v. Juan Joaquin Soria*, Case
17 No. F06903679-9 in Fresno County Superior Court, Respondent was convicted of violating
18 Health and Safety Code section 11377, subdivision (a) (Possession of Controlled Substance –
19 **methamphetamine**), a felony. The conviction was entered as follows:

20 a. On or about May 18, 2006, Respondent was the driver of a vehicle contacted by
21 police. He was discovered to have no driver's license or proof of insurance and to be in
22 possession of narcotics and drug paraphernalia.

23 b. On or about May 26, 2006, Respondent was charged by Felony Complaint in
24 Case No. F06903679-9 with violating (1) Health and Safety Code section 11377, subdivision (a)
25 (Possession of Controlled Substance – **methamphetamine**), a felony, (2) Health and Safety Code
26 section 11364 (Possession of Smoking Device/Paraphernalia), a misdemeanor, and (3) Vehicle
27 Code section 14601.1, subdivision (a) (Driving On Suspended/Revoked License), a misdemeanor.

28 ///

1 c. On or about July 10, 2006, Respondent pleaded no contest to Count (1) and was
2 convicted. The remaining counts were dismissed. Imposition of judgment was suspended and
3 Respondent was placed on formal probation for two (2) years on terms and conditions including
4 drug treatment, documented attendance at 12-step meetings, and payment of fines and fees.

5 d. On or about August 10, 2006, Respondent admitted to a violation of probation.
6 Probation was reinstated with an additional term and condition of weekly drug testing.

7 10. On or about October 23, 2007, in the criminal case *People v. Juan Joaquin Soria*,
8 Case No. BB729118 in Santa Clara County Superior Court, Respondent was convicted of
9 violating (1) Penal Code section 460, subdivision (b) (2nd Degree Burglary), a felony, and (2)
10 Health and Safety Code section 11377, subdivision (a) (Possession of Controlled Substance –
11 **methamphetamine**), a misdemeanor. The conviction was entered as follows:

12 a. In or about January 2007 through approximately March 2007, Respondent (1)
13 used, without permission, company letterhead from a company by which he was temporarily
14 employed to (2) create a false authorization for himself to use the company credit card and (3)
15 used the company credit card to make unauthorized purchases at Home Depot totaling \$3,700.00.

16 In or about June 2007, when police officer(s) arrested Respondent, and conducted a search
17 incident to arrest, they discovered on his person a small baggie of **methamphetamine**.

18 b. On or about August 30, 2007, Respondent was charged by Felony Complaint in
19 Case No. BB729118 with violating (1) Penal Code section 459-460(b) (2nd Degree Burglary), a
20 felony, (2) Penal Code section 459-460(b) (2nd Degree Burglary), a felony, (3) Penal Code section
21 459-460(b) (2nd Degree Burglary), a felony, and (4) Health and Safety Code section 11377(a)
22 (Possession of Controlled Substance – **methamphetamine**), a felony.

23 c. On or about October 23, 2007, pursuant to Penal Code section 17, count (4) was
24 reduced to a misdemeanor, and Respondent pleaded nolo contendere to and was convicted of
25 counts (1) and (4). On or about December 20, 2007, imposition of sentence was suspended and
26 Respondent was placed on formal probation for three (3) years on terms and conditions including
27 a no-contact order for the victim(s), abstention from drug or alcohol use, substance abuse
28 treatment, search and testing terms, restitution, and fines and fees.

1 SECOND CAUSE FOR DENIAL OF APPLICATION

2 (Dishonesty)

3 11. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(2); 480(a)(3) by reference to 4301(f) and/or (g); and/or 4300(c) by reference to
5 4301(f) and/or (g) in that, as described in paragraph 10 above, Respondent was dishonest and/or
6 falsely represented and/or made false statement(s) of fact.

7 THIRD CAUSE FOR DENIAL OF APPLICATION

8 (Unprofessional Conduct)

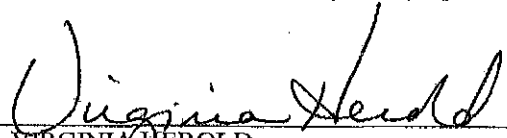
9 12. Respondent's application is subject to denial under the following section(s) of the
10 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
11 in paragraphs 9 through 11 above, Respondent engaged in unprofessional conduct.

12
13 PRAYER

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

- 16 1. Denying the application of Juan Joaquin Soria for a pharmacy technician license;
17 2. Taking such other and further action as is deemed necessary and proper.

18
19 DATED: 7/22/15


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

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