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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:

**TIFFANY NICOLE DiSTEFANO
aka TIFFANY NICOLE BURKHARDT**

Pharmacy Technician Applicant.

Respondent.

Case No. 5911
OAH No. 2017060080
DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about March 22, 2017, 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. 5911 against Tiffany Nicole DiStefano aka Tiffany Nicole Burkhardt (Respondent) before the Board of Pharmacy.

2. On or about January 5, 2016, Respondent filed an application dated January 6, 2016, with the Board of Pharmacy to obtain a Pharmacy Technician License.

3. On or about May 6, 2016, the Board issued a letter denying Respondent's application for a Pharmacy Technician License. On or about July 4, 2016, Respondent appealed the Board's denial of her application and requested a hearing.

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1 4. On or about April 7, 2017, an employee of the Department of Justice, served by
2 Certified and First Class Mail a copy of the Statement of Issues No. 5911, Statement to
3 Respondent, Notice of Defense, Request for Discovery, Discovery Statutes, Designation of
4 Counsel (2), and Notice of Withdrawal of Request for Hearing (2) to Respondent's address on the
5 application form, which was:

6 6920 Watt Ave., #1021
7 North Highlands, 95660.

8 A copy of the Statement of Issues is attached as exhibit A, and is incorporated herein by
9 reference.

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

12 6. On or about July 4, 2016, Respondent appealed the denial of her application and
13 requested a hearing in this action. On June 13, 2017, a Notice of Hearing was served by mail at
14 Respondent's address on the application and it informed her that an administrative hearing in this
15 matter was scheduled for July 12, 2017. When Respondent did not appear at hearing, the Court
16 attempted to contact Respondent via telephone and left a voice message requesting a return call.
17 Respondent returned the Court's call and left a voice message indicating that she had moved to
18 Oregon and did not receive notice of the hearing date. Based on Respondent's representations,
19 the hearing was continued.

20 7. On July 27, 2017, a Notice of Continued Hearing was served by mail at Respondent's
21 address on the application and it informed her that an administrative hearing in this matter was
22 scheduled for September 18, 2017. Counsel for Complainant sent e-mails to Respondent at the e-
23 mail address listed on her application on July 12, 2017; July 19, 2017; August 25, 2017; August
24 31, 2017; and September 8, 2017 and asked for return contact. Respondent did not respond.
25 Counsel for Complainant also left voice mail messages on the phone number listed on
26 Respondent's application on July 12, 2017; August 25, 2017, August 31, 2017, and September 8,
27 2017 and asked for a return call. Respondent did not respond.

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1 8. The matter was called for hearing at the date, time and location set forth in the Notice
2 of Continued Hearing. The assigned Administrative Law Judge found that the service of the
3 Notice of Continued Hearing on Respondent was proper. There was no appearance by or on
4 behalf of Respondent. A default was declared and on motion of counsel for Complainant, the
5 matter was remanded to the Board under Government Code section 11520.

6 9. Government Code section 11506(c) states, in pertinent part:

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

12 10. California Government Code section 11520(a) states, in pertinent part:

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

17 11. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing based upon the
19 original cause for denial set forth in the Statement of Issues and Respondent's failure to establish
20 entitlement to issuance of a license.

DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent has subjected her application for
22 a Pharmacy Technician License to denial.

23 2. Service of Statement of Issues No. 5911 and related documents was proper and in
24 accordance with the law.

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

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

28 a. Violation of Business and Professions Code, section 4300(c) (Out of State
Discipline), on the grounds of unprofessional conduct as defined in Code section 4301(n), in that
effective July 15, 2013, pursuant to a Consent Order issued by the Oregon State Board of

1 Pharmacy in a disciplinary proceeding titled, *In the Matter of the Technician License of Tiffany*
2 *Nicole Burkhardt, Licensee, Case No. 2012-0501*, Respondent's Oregon Pharmacy Technician
3 License Number T-0013981 was placed on probation for a period of three (3) years with terms
4 and conditions. The Order was based on the following: On or about October 2, 2012, while
5 employed at Walgreens Pharmacy, Respondent tested positive for Marijuana, a controlled
6 substance. Said conduct is unprofessional conduct as defined by OAR¹ 855-006-0005(28)(b), (c),
7 and (j), and is in violation of, and grounds for discipline pursuant to OAR 855-025-0050(1) and
8 (12), ORS² 689.490(2)(a) and (c), and 689.405(1)(a) and (e)(B);

9 b. Violation of Business and Professions Code, section 480(a)(1) (Conviction of a
10 Crime), in that on or about March 20, 2000, in the case of *People v. Tiffany Nicole DiStefano*
11 (Super. Ct. Santa Clara County, 2000, Case No. BB048102), Respondent was convicted by the
12 Court on her plea of nolo contendere of violating Penal Code section 484/488 (theft/petty theft), a
13 misdemeanor. The circumstances of the crime were that on or about March 5, 2000, Respondent
14 unlawfully stole, took, and carried away personal property of Shoe Pavilion, to wit: shoes. The
15 crime is substantially related to the qualifications, functions or duties of a pharmacy technician;

16 c. Violation of Business and Professions Code, section 480(d) (False Statement on
17 Application), in that on or about January 6, 2016, Respondent knowingly made a false statement
18 of fact required to be revealed in the application for licensure, in that Respondent failed to
19 disclose the conviction set forth above in paragraph 10;

20 d. Violation of Business and Professions Code, section 480(a)(2) (Dishonesty,
21 Fraud or Deceit), in that Respondent committed acts involving dishonesty, fraud or deceit with
22 the intent to substantially benefit herself, as more particularly set forth above in paragraphs 10
23 and 11; and

24 e. Violation of Business and Professions Code, section 480(a)(3)(A) and 4300(c)
25 (Committed Acts Which if Done by a Licentiate Would be Grounds for Discipline), in that she
26

27
28 ¹ Oregon Administrative Rules

² Oregon Revised Statutes

1 committed the above acts detailed in subsections 4(a)-(d), which if done by a licentiate of the
2 profession would constitute grounds for discipline for unprofessional conduct.

3 **ORDER**

4 IT IS SO ORDERED that the application of Respondent Tiffany Nicole DiStefano aka
5 Tiffany Nicole Burkhardt is hereby denied.

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

10 This Decision shall become effective at 5:00 p.m. on November 23, 2017.

11 It is so ORDERED on October 24, 2017.

12
13 BOARD OF PHARMACY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA

16 

17
18 By _____

19 Amy Gutierrez, Pharm.D.
20 Board President

21 DOJ docket number: SA2016103004
22 12819290.DOC

23 Attachment:

24 Exhibit A: Statement of Issues No. 5911

25 Exhibit B: Office of Administrative Hearings Findings and Declaration of Default; Order
26 of Remand

Exhibit A

Statement of Issues No. 5911

1 XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
2 Supervising Deputy Attorney General
STANTON W. LEE
3 Deputy Attorney General
State Bar No. 203563
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 445-9921
6 Facsimile: (916) 324-5567
Attorneys for Complainant
7

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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 5911

12 **TIFFANY NICOLE DiSTEFANO**
13 **aka TIFFANY NICOLE BURKHARDT**

STATEMENT OF ISSUES

14 **Pharmacy Technician Applicant.**

15 Respondent.

16
17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Statement of Issues solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about January 5, 2016, the Board received an application for a pharmacy
22 technician license from Tiffany Nicole DiStefano, also known as Tiffany Nicole Burkhardt
23 ("Respondent"). On or about January 6, 2016, Respondent certified under penalty of perjury to
24 the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on May 6, 2016.

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1 **JURISDICTION**

2 3. Pursuant to Business and Professions Code (“Code”) section 485(b), on or about May
3 6, 2016, Respondent’s application was denied and she was notified of the right to a hearing to
4 appeal the denial.

5 4. On or about July 5, 2016, the Board received Respondent’s request for a hearing to
6 appeal the denial of her application.

7 **STATUTORY PROVISIONS**

8 5. Business and Professions Code (“Code”) section 4300 states, in pertinent part:

9 (c) The board may refuse a license to any applicant guilty of unprofessional
10 conduct.

11 6. Code section 4301 states, in pertinent part:

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

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

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

18 (h) The administering to oneself, of any controlled substance, or the use of any
19 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
20 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.

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

22 (l) The conviction of a crime substantially related to the qualifications,
23 functions, and duties of a licensee under this chapter. The record of conviction of a
24 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
25 States Code regulating controlled substances or of a violation of the statutes of this
26 state regulating controlled substances or dangerous drugs shall be conclusive
27 evidence of unprofessional conduct. In all other cases, the record of conviction shall
28 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

1 board may take action when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under
4 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
5 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment.

7 (n) The revocation, suspension, or other discipline by another state of a license
8 to practice pharmacy, operate a pharmacy, or do any other act for which a license is
9 required by this chapter.

10 7. Code section 480 states:

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

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

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

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

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

27 (b) Notwithstanding any other provision of this code, a person shall not
28 be denied a license solely on the basis that he or she has been convicted of a felony if
he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not
be denied a license solely on the basis of a conviction that has been dismissed
pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who
has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or
1203.41 of the Penal Code shall provide proof of the dismissal.

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

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DRUGS

8. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Out of State Discipline)

9. Respondent's application is subject to denial under Code section 4300(c), on the grounds of unprofessional conduct as defined in Code section 4301(n), in that effective July 15, 2013, pursuant to a Consent Order issued by the Oregon State Board of Pharmacy in a disciplinary proceeding titled, *In the Matter of the Technician License of Tiffany Nicole Burkhardt, Licensee, Case No. 2012-0501*, Respondent's Oregon Pharmacy Technician License Number T-0013981 was placed on probation for a period of three (3) years with terms and conditions. The Order was based on the following: On or about October 2, 2012, while employed at Walgreens Pharmacy, Respondent tested positive for Marijuana, a controlled substance. Said conduct is unprofessional conduct as defined by OAR¹ 855-006-0005(28)(b), (c), and (j), and is in violation of, and grounds for discipline pursuant to OAR 855-025-0050(l) and (12), ORS² 689.490(2)(a) and (c), and 689.405(l)(a) and (e)(B).

SECOND CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

10. Respondent's application is subject to denial under Code section 480(a)(1), in that on or about March 20, 2000, in the case of *People v. Tiffany Nicole DiStefano* (Super. Ct. Santa Clara County, 2000, Case No. BB048102), Respondent was convicted by the Court on her plea of nolo contendere of violating Penal Code section 484/488 (theft/petty theft), a misdemeanor. The circumstances of the crime were that on or about March 5, 2000, Respondent unlawfully stole, took, and carried away personal property of Shoe Pavilion, to wit: shoes. The crime is substantially related to the qualifications, functions or duties of a pharmacy technician.

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¹ Oregon Administrative Rules
² Oregon Revised Statutes

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THIRD CAUSE FOR DENIAL OF APPLICATION

(False Statement on Application)

11. Respondent’s application is subject to denial under Code section 480(d), in that on or about January 6, 2016, Respondent knowingly made a false statement of fact required to be revealed in the application for licensure, in that Respondent failed to disclose the conviction set forth above in paragraph 10.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud or Deceit)

12. Respondent’s application is subject to denial under Code section 480(a)(2), in that Respondent committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself, as more particularly set forth above in paragraphs 10 and 11.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which If Done By A Licentiate)

13. Respondent’s application is subject to denial under Code section 480(a)(3)(A) and 4300(c), in that she committed acts which if done by a licentiate of the profession would constitute grounds for discipline for unprofessional conduct under the following Code sections:

- a. Code section 4301(l) (conviction of a crime), as set forth above in paragraph 10.
- b. Code section 4301(h) (use of a controlled substance, to wit: Marijuana), as set forth above in paragraph 9.
- c. Code section 4301(g) (knowingly making or signing a document that falsely represents the existence or nonexistence of a state of facts), as more particularly set forth above in paragraph 11.
- d. Code section 4301(f) (commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption), as more particularly set forth above in paragraphs 9, 10, and 11.

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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 Tiffany Nicole DiStefano, also known as Tiffany Nicole Burkhardt for a Pharmacy Technician license; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/22/17 Virginia Herold

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

SA2016103004
12570286.doc

Exhibit B

Office of Administrative Hearings Findings and Declaration of Default; Order of Remand



OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
GENERAL JURISDICTION DIVISION

For more information visit
www.dgs.ca.gov/oah

FINDINGS AND DECLARATION OF DEFAULT; ORDER OF REMAND

(Gov. Code § 11520)

Case Name <i>Sgt. Against Tiffany Nicole DiStefano aka Tiffany Nicole Burkhardt</i>	OAH Case Number <i>2017060080</i>
Name of Agency <i>Pharmacy</i>	Agency Case Number <i>5911</i>
Agency Attorney <i>Stanton W. Lee</i>	Respondent/Appellant/Petitioner <i>Tiffany Nicole DiStefano</i>
	Respondent/Appellant/Petitioner Attorney <i>None</i>

FINDINGS

A Notice of Hearing dated July 27, 2017 was served on Respondent/Appellant/Petitioner on July 27, 2017

The Notice of Hearing was served on Respondent/Appellant/Petitioner by (method of service)

- Certified Mail Regular US Mail Other Email

at (address of service)

- The address provided by Respondent/Appellant/Petitioner in the Notice of Defense
 The address maintained by the Agency as the Address of Record for Respondent/Appellant/Petitioner
 Other address provided by Respondent/Appellant/Petitioner

The Notice of Hearing provided notice that a hearing would take place on (date) Sept. 18, 2017 at (time) 9:00 a.m.
at (location):

SACRAMENTO
2349 GATEWAY OAKS DR., SUITE 200
SACRAMENTO, CA 95833
Phone 916-263-0550 FAX 916-376-6349

OAKLAND
1515 CLAY STREET, SUITE 206
OAKLAND, CA 94612
Phone 510-622-2722 FAX 916-376-6323

LOS ANGELES
320 WEST FOURTH STREET, SUITE 630
LOS ANGELES, CA 90013
Phone 213-576-7200 FAX 916-376-6324

SAN DIEGO
1350 FRONT STREET, ROOM 3005
SAN DIEGO, CA 92101
Phone 619-525-4475 FAX 916-376-6325

OTHER LOCATION: _____

The matter was called for hearing at the date, time and location set forth in the Notice of Hearing. Counsel for the Agency appeared for hearing. Service of the Notice of Hearing was proper.

There was no appearance by or on behalf of Respondent/Appellant/Petitioner. At (time) 9:40 a.m. a default was declared.

Agency counsel has moved for remand of the matter for Agency action under Government Code section 11520.

ORDER OF REMAND

Based upon Respondent/Appellant/Petitioner's failure to appear at the hearing, the Agency's motion is granted. This matter is remanded to the Agency under Government Code section 11520.

DATED: <i>9-18-2017</i>	ADMINISTRATIVE LAW JUDGE (Print): <i>Danelle C. Brown</i>	ADMINISTRATIVE LAW JUDGE (Signature): <i>[Signature]</i>
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