

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
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. 3719

12 **MICHAEL CASTIEL**
2485 Vista Wood Cir. #13
13 Thousand Oaks, CA 91362
14 **Applicant for Pharmacy Technician**
Registration

STATEMENT OF ISSUES

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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21 1. Virginia K. Herold ("Complainant") brings this Statement of Issues solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy ("Board").

23 2. On or about May 13, 2009, the Board of Pharmacy received an application for
24 Pharmacy Technician Registration from Michael Castiel ("Respondent"). On or about May 9,
25 2009, Michael Castiel certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on April 13,
27 2010.

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1 JURISDICTION

2 3. This Statement of Issues is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 states, in pertinent part:

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

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

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

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

21 ...

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

25 5. Section 493 of the Code states:

26 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
27 the department pursuant to law to deny an application for a license or to suspend or revoke a
28 license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.”

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8 **REGULATORY PROVISIONS**

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

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

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17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 (Conviction of Substantially Related Crime)

19 7. Respondent’s application is subject to denial under section 480, subdivision (a)(1) of
20 the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that
21 Respondent was convicted of a crime substantially related to the qualifications, functions or
22 duties of a pharmacy technician applicant as follows:

23 a. On or about March 19, 2008, after pleading nolo contendere, Respondent was
24 convicted of violating Pen. Code section 273.5(a) [infliction of corporal injury on current or
25 former spouse/cohabitant], a misdemeanor, in the criminal proceeding entitled *The People of the*
26 *State of California v. Michael Castiel* (Super. Court County of Ventura, 2007, No. 2007011067).
27 Respondent was sentenced to 5 days in jail and placed on formal probation for 36 months (with
28 terms and conditions). Respondent was ordered to attend domestic violence counseling sessions

1 for a period of one year, participate in the Direct Work program and pay approximately \$2,542,00
2 in fines, fees and penalties.

3 b. The underlying circumstances occurred on or around March 18, 2007, when
4 pursuant to an argument with his wife, Respondent hit his wife on the back of her legs with his
5 fists, causing visible bruises. The following day on or around March 19, 2007, Respondent
6 became angry with his wife and threw a metal box at her, which struck her in the side of the head
7 causing visible injury. On or around March 24, 2007 Ventura County Sheriffs contacted
8 Respondent, who admitted that he and his wife "have a very volatile relationship, which often
9 leads to physical violence" between the two of them. Respondent was subsequently arrested for
10 domestic violence.

11 c. On or around May 4, 2000, Respondent was convicted of violating two counts
12 of Veh. Code section 4463(a)(2) [uttering a false certificate], a misdemeanor, in the criminal
13 proceeding entitled *The People of the State of California v. Michael Castiel* (Super. Court County
14 of Los Angeles, 2000, No. 035384). Respondent was ordered to perform 250 hours of
15 community service and pay \$2,500.00 to the Bureau of Automotive Repair and \$500.00 in
16 restitution.

17 d. The underlying circumstances occurred on or around October 21, 1998 when
18 Respondent knowingly uttered, published, passed and attempted to pass as true and genuine, a
19 false, altered, forged and counterfeited smog certificate with intent to defraud.

20 e. On or around April 3, 1996, Respondent was convicted of violating one count
21 of Pen. Code 242 [battery], a misdemeanor, in the criminal proceeding entitled *The People of the*
22 *State of California v. Michael Castiel* (Van Nuys Municipal Court, 1996, No. 6PN0124501).
23 Respondent was sentenced to 12 months of probation and ordered to participate in a work
24 program. Respondent's conviction was later dismissed pursuant to Pen. Code section 1203.4.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Act Involving Dishonesty)

8. Respondent’s application is subject to denial under section 480, subdivision (a)(2) of the Code, in that Respondent committed acts involving dishonesty. Complainant now refers to and incorporates all the allegations in paragraph 7, subparagraphs (c) and (d) as though set forth fully herein.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Knowingly Making a False Statement of Fact on Application for Licensure)

9. Respondent’s application is subject to denial under section 480, subdivision (c) of the Code, in that Respondent knowingly made a false statement of fact on his application for licensure to the Board. The circumstances are that on or about May 9, 2009, Michael Castiel certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application for licensure to the Board. Specifically, in response to Question No. 6, which asks, “Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances,” Respondent answered “No.” In doing so, Respondent made a false statement of fact concerning his previous convictions. Complainant now refers to and incorporates all the allegations in paragraph 7, and all subparagraphs as though set forth fully herein.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts If Done By Licentiate Would be Grounds for Suspension or Revocation)

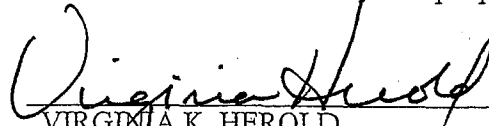
10. Respondent’s application is subject to denial under section 480, subdivision (a)(3) of the Code, in that Respondent committed acts which if done by a licentiate in the profession would be grounds for suspension or revocation of license. Complainant now refers to and incorporates all the allegations in paragraphs 7, 8 and 9, including all subparagraphs as though set forth fully herein.

PRAYER

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 Michael Castiel for Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/23/10



VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

LA2010502536
statement of issues.rtf