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8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Statement of Issues Case No. 4163
12	Against:
13	AMY LYN STEPHENS 14025 Osage Rd. STATEMENT OF ISSUES
14	Apple Valley, CA 92307
15	Pharmacy Technician Applicant
16	Respondent.
17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs
21	(Board).
22	2. On or about November 23, 2010, the Board received an application for a Pharmacy
23	Technician License from Amy Lyn Stephens (Respondent). On or about October 21, 2010, Amy
24	Lyn Stephens certified under penalty of perjury to the truthfulness of all statements, answers, and
25	representations in the application. The Board denied the application on June 13, 2011.
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JURISDICTION

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

STATUTORY PROVISIONS

- 4. Section 480 states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- "(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- "(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.
- "(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."
- 5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

- 6. Section 4300, subdivision (c), states, in pertinent part, that "[t]he board may refuse a license to any applicant guilty of unprofessional conduct. . . ."
 - 7. Section 4301 states, in pertinent part:

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

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

. . .

- "(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.
- "(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. .

"(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee . . . 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. . . ."

REGULATORY PROVISION

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

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

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FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially Related Crimes)

- 9. Respondent's application is subject to denial under sections 480, subdivisions (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician, as follows:
- a. On or about May 27, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23103(a) [reckless driving], in the criminal proceeding entitled *The People of the State of California vs. Amy Lyn Stephens* (Super. Ct. San Bernardino County, 2009, No. 27101JW). The Count sentenced Respondent to two (2) days in jail and placed her on 36 months of probation. The circumstances underlying the conviction are that on or about July 5, 2008, Respondent while having a tested 0.07% blood alcohol content level was driving a motor vehicle at an excessive rate of speed.
- b. On or about May 13, 2008, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 484 [theft], in the criminal proceeding entitled *The People of the State of California vs. Amy Lyn Stephens* (Super. Ct. San Bernardino County, 2008, No. MVI801113). The Court sentenced Respondent to one (1) day in jail, placed her on 36 months of probation, and ordered her to stay away from the Target retail store, in Apple Valley, CA. The circumstances underlying the conviction are that on or about February 24, 2008, Respondent stole a bottle of Jose Cuervo Tequila from a Target retail store, in Apple Valley, CA.
- c. On or about January 9, 2008, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 484(a)/490.5 [theft/retail merchandise] in the criminal proceeding entitled *The People of the State of California vs. Amy Lyn Stephens* (Super. Ct. San Bernardino County, 2008, No. MVI800052). The Court sentenced Respondent to nine (9) day in jail, placed her on 36 months probation, and ordered her to stay away from the Mervyns department store, in Apple Valley, CA. The circumstances underlying the conviction are that on or about December 27, 2007, Respondent stole a pair of Reebok shoes valued at \$36.78 from a Mervyns department store, in Apply Valley, CA.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty in Application Documents)

10. Respondent's application is subject to denial under section 480, subdivision (c), in that on or about October 21, 2010, Respondent knowingly made a false statement of fact required to be revealed in her application for licensure by certifying under penalty of perjury to accuracy of all statements in the application and answering "No" to question No. 6, when in fact, she had sustained three (3) convictions on or about January 9, 2008, May 13, 2008, and May 27, 2009. Question 6, states:

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? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of \$500 or less need not be reported. If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received. In addition to this written explanation, please provide the Board of Pharmacy with certified copies of all pertinent court documents or arrest reports relating to this conviction.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent's application is subject to denial under section 480, (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself and / or substantially injure another. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 9 and 10, inclusive, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Conduct Warranting License Discipline)

12. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that

Respondent committed acts which if done by a licensee would be grounds for discipline.

Respondent violated sections, as follows:

- a. Sections 490, 4300 and 4301, subdivision (l), on the grounds of unprofessional conduct, in that on or about January 9, 2008, on or about May 13, 2008 and on or about May 27, 2009, Respondent sustained criminal convictions. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 8, subparagraphs a, b and c, inclusive, as though set forth fully.
- b. Sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that on or about December 27, 2007, and on or about February 24, 2008, Respondent committed acts involving moral turpitude, dishonest, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 8-11, inclusive, as though set forth fully.
- c. Sections 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about October 21, 2010, Respondent knowingly signed her application for licensure falsely represented her criminal conviction history. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 10, inclusive, as though set forth fully.

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 Amy Lyn Stephens' Pharmacy Technician License Application; and

2. Taking such other and further action as deemed necessary and proper.

DATED: 1/17/13

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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