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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:
JEFFREY KAZUO MASUSHIGE
2341 Isabella Avenue
Monterey Park, CA 91754
Pharmacy Technician Applicant

Respondent.

Case No. 3450
OAH No. L-2010121083
DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about November 2, 2010, 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. 3450 against Jeffrey Kazuo Masushige (Respondent) before the Board of Pharmacy.
2. On or about March 24, 2008, Respondent filed an application dated March 22, 2008, with the Board of Pharmacy to obtain a Pharmacy Technician registration.
3. On or about May 14, 2009, the Board issued a letter denying Respondent's application for a Pharmacy Technician registration. On or about July 7, 2009, Respondent appealed the Board's denial of his application and requested a hearing.

1 4. On or about November 29, 2010, Carolina Castillo, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 3450,
3 Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and Notice
4 from Respondent/Applicant to Respondent's address on the application form, which was and is:
5 2341 Isabella Avenue, Monterey Park, CA 91754. A copy of the Statement of Issues is attached
6 as Exhibit A, and is incorporated herein by reference.

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

9 6. On or about July 7, 2009, Respondent appealed the denial of his application and
10 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
11 address on the application and it informed him that an administrative hearing in this matter was
12 scheduled for July 11, 2011. Respondent failed to appear at that hearing.

13 7. Business and Professions Code section 118 states, in pertinent part:

14 (a) The withdrawal of an application for a license after it has been filed with a
15 board in the department shall not, unless the board has consented in writing to such
16 withdrawal, deprive the board of its authority to institute or continue a proceeding
17 against the applicant for the denial of the license upon any ground provided by law or
18 to enter an order denying the license upon any such ground.

19 8. Government Code section 11506 states, in pertinent part:

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

25 9. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 or upon other evidence and affidavits may be used as evidence without any notice to
respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

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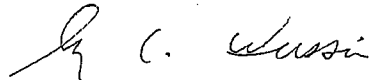
ORDER

IT IS SO ORDERED that the application of Respondent Jeffrey Kazuo Masushige is hereby denied.

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

This Decision shall become effective on November 30, 2011.

It is so ORDERED October 31, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

DOJ docket number:LA2009604200
60659426.DOC

Attachment: Exhibit A: Statement of Issues No. 3450

Exhibit A

Statement of Issues No. 3450

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
Against:
12 **JEFFREY KAZUO MASUSHIGE**
13 2341 Isabella Avenue
14 Monterey Park, CA 91754
15 Respondent.

Case No. 3450
STATEMENT OF ISSUES

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 24, 2008, the Board of Pharmacy (Board) received an application
21 for Registration as a Pharmacy Technician from Jeffrey Kazuo Masushige (Respondent). On or
22 about March 22, 2008, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 May 14, 2009. On or about July 7, 2009, the Board received a letter from Respondent, requesting
25 a hearing to appeal the denial of his application.
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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.

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.

(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."

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

1 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
2 conviction following a plea of nolo contendere. Any action that a board is permitted to take
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under the
6 provisions of Section 1203.4 of the Penal Code.”

7 6. Section 492 states:

8 "Notwithstanding any other provision of law, successful completion of any diversion
9 program under the Penal Code, or successful completion of an alcohol and drug problem
10 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
11 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
12 commencing with Section 500) of this code, or any initiative act referred to in that division, from
13 taking disciplinary action against a licensee or from denying a license for professional
14 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
15 pertaining to an arrest.

16 This section shall not be construed to apply to any drug diversion program operated by
17 any agency established under Division 2 (commencing with Section 500) of this code, or any
18 initiative act referred to in that division."

19 7. Section 4300 provides, in pertinent part that every license issued by the Board is
20 subject to discipline, including suspension or revocation.

21 8. Section 4301 states, in pertinent part:

22 "The Board shall take action against any holder of a license who is guilty of unprofessional
23 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
24 Unprofessional conduct shall include, but is not limited to, any of the following:

25

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

28

1 (l) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

18

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.

23 (p) Actions or conduct that would have warranted denial of a license.”

24

REGULATORY PROVISIONS

25

9. California Code of Regulations, title 16, Section 1770 states, in pertinent part:

26

“For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Sections 475) of the Business and Professions Code,
28 a crime or act shall be considered substantially related to the qualifications, functions or duties of

1 a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare.”

4 10. **CONTROLLED SUBSTANCES**

5 a. “Cocaine (base),” is a Schedule I controlled substance as designated by Health and
6 Safety Code Section 11054, subdivision (f)(1) and is categorized as dangerous drug pursuant to
7 Business and Professions Code Section 4022.

8 b. “Cocaine,” is a Schedule II controlled substance as designated by Health and Safety
9 Code Section 11055, subdivision (b)(6) and is categorized as dangerous drug pursuant to
10 Business and Professions Code Section 4022.

11 c. “Marijuana,” is a Scheduled I controlled substance as designated by Health and
12 Safety Code Section 11054, subdivision (d)(13) and is categorized as dangerous drug pursuant to
13 Business and Professions Code Section 4022.

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 **(Conviction of a Crime)**

16 11. Respondent’s application is subject to denial under sections 4301, subdivision (l) and
17 480, subdivision (a)(1), in that Respondent was convicted of a crime. On or about June 22, 2010,
18 after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating
19 Vehicle Code Section 23152, subdivision (b) [driving while having 0.08% and more, by weight,
20 of alcohol in his blood] in the criminal proceeding *The People of the State of California v. Jeffrey*
21 *Kazuo Masushige* (Super. Ct. Los Angeles County, 2010, No. 0JB05352). The Court placed
22 Respondent on three years probation, with terms and conditions. The circumstances surrounding
23 the conviction are that, on or about April 14, 2010, during a traffic stop by the California
24 Highway Patrol, in Baldwin Park, California, Respondent was observed by the police officer to
25 have red watery eyes, a smell of alcoholic beverage on his breath, and slurred and thick speech.
26 When asked if he had been drinking, Respondent admitted to drinking three “Adios” mixed
27 drinks between the hours of 10:00 p.m. and the time of the traffic stop. When asked if he felt the
28 effects of the drinks, Respondent stated, “I feel pretty buzzed, a little tipsy.” Respondent

1 submitted to a preliminary alcohol screening breath test that detected the presence of alcohol in
2 his system, with two readings of .145% and .139%.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

5 12. Respondent's application is subject to denial under Sections 4301, subdivision (p) and
6 480, subdivision (a)(3)(A) and (B), in that Respondent committed acts which if done by a
7 licentiate would be grounds for suspension or revocation of his license, as follows:

8 a. On or about June 22, 2010, Respondent was convicted of a crime substantially related
9 to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree
10 evidence his present or potential unfitness to perform the functions authorized by his license in a
11 manner consistent with the public health, safety, or welfare, in violation of Sections 4301,
12 subdivision (1) and 490, in conjunction with California Code of Regulations, title 16, Section
13 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in
14 Paragraph 11, as though set forth fully.

15 b. On or about November 16, 2006, a criminal case was filed against Respondent,
16 charging him with one count of violating Health and Safety Code Section 11350, subdivision (A)
17 [possessing controlled substances] in the criminal proceeding *The People of the State of*
18 *California v. Jeffrey Kazuo Masushige* (Super. Ct. Los Angeles County, 2006, No. GA067606).
19 On or about August 20, 2008, this case was dismissed because of the delay in its prosecution.
20 The circumstances surrounding the case are that, on or about September 27, 2006, during a traffic
21 stop by the Glendale Police Department, Respondent was observed leaning forward and into the
22 right front floorboard of his vehicle. When the police officer asked why he was leaning forward,
23 Respondent replied that his water bottle had fallen. He was then asked if he had anything illegal
24 inside the vehicle, and he indicated that he did not. Respondent was also asked if he had ever
25 been arrested before and indicated that he had recently been arrested for possession of "crack
26 cocaine." During a search of Respondent's person, the officer felt a small hard bulge on the
27 change pocket of Respondent's pants. When asked what he was feeling, Respondent stated "I
28 don't know." The officer found a small clear zip lock bag that contained a small amount of a

1 dried green leafy substance recognized as marijuana. A further search of Respondent's person
2 revealed a small amount of a white chunky substance recognized as cocaine. When asked how
3 long he had been using crack cocaine and marijuana, Respondent admitted that he had used crack
4 cocaine for approximately one year and marijuana since he was in high school. Respondent was
5 arrested for a violation of Health and Safety Code Section 11350, subdivision (a) [possessing
6 controlled substances].

7 c. On or about June 19, 2006, a criminal case was filed against Respondent, charging
8 him with one felony count of violating Health and Safety Code Section 11350, subdivision (A)
9 [possessing controlled substances] in the criminal proceeding *The People of the State of*
10 *California v. Jeffrey Kazuo Masushige* (Super. Ct. Los Angeles County, 2006, BA304478). On or
11 about October 4, 2006, the Court placed Respondent on deferred entry of judgment for three
12 years, and assessed fines, fees and penalties against him. On or about November 9, 2007, the
13 case was dismissed after Respondent successfully completed the deferred entry of judgment
14 program. The circumstances surrounding this criminal case are that, on or about June 13, 2006,
15 during a traffic stop by the Los Angeles County Sheriff's Department, Respondent was observed
16 stuffing something into his right front pants pocket. Respondent was observed to be nervous,
17 fidgety, and he tried to shove a plastic in his pocket. When asked why he was so nervous,
18 Respondent admitted that he had a "rock" on him. During a search of Respondent's person, the
19 officer recovered a torn piece of plastic that contained two off-white, rock-like, objects that
20 resembled "rock cocaine." Respondent was arrested for a violation of Health and Safety Code
21 Section 11350, subdivision (a) (possession of a controlled substance).

22 d. Respondent was in possession of a controlled substance, to wit: Marijuana and
23 Cocaine, in violation of Section 4301 subdivisions (j) and (o). Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in Subparagraph (b), as though set forth
25 fully.

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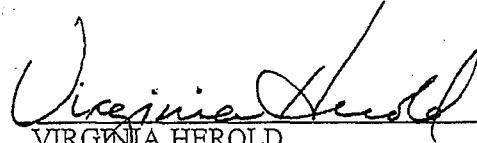
1 e. Respondent was in possession of a controlled substance, to wit: Rock Cocaine, in
2 violation of Section 4301 subdivisions (j) and (o). Complainant refers to, and by this reference
3 incorporates, the allegations set forth above in Subparagraph (c), as though set forth fully.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board issue a decision:

- 7 1. Denying the application of Respondent for Registration as a Pharmacy Technician.
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 11/2/10



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

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