

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

In the Matter of the Statement of Issues Against:

**AILSA JEAN HUNTER
P.O. Box 923
Grover Beach, CA 93483**

Pharmacy Technician Registration Applicant
Respondent.

Case No. 3623

OAH No. 2011021037

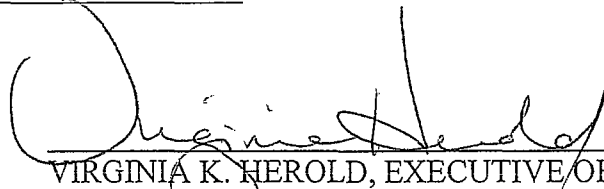
NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2) the attached decision is hereby deemed adopted by operation of law on February 2, 2012, by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in the above entitled matter.

Pursuant to Government Code section 11519, this Decision shall become effective on March 5, 2012.

Date

2/2/12



VIRGINIA K. HEROLD, EXECUTIVE OFFICER
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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In the Matter of the Statement of Issues
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AILSA JEAN HUNTER
P.O. Box 923
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PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in San Luis Obispo, California, on October 6, 2011.

Geoffrey L. Ward, Deputy Attorney General, represented Virginia Herold (Complainant).

David L. Fisher, Attorney at Law, represented Ailsa Jean Hunter (Respondent), who was not present at the hearing.

Complainant seeks to deny Respondent's license application on the basis of Respondent's criminal conviction. Respondent presented evidence that the conviction has been set aside pursuant to Penal Code section 1203.4.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity as Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On October 28, 2008, the Board received Respondent's application for registration as a pharmacy technician. Respondent disclosed the conviction set forth in factual finding number 4. The Board denied the application on November 10, 2009, citing the criminal conviction as the reason. Respondent appealed the denial and the Statement of Issues was subsequently filed.

3. Complainant served the Statement of Issues, the Amended Notice of Hearing, and all other required documents on Respondent.

4. On March 12, 2002, in the Superior Court, County of San Luis Obispo, San Luis Obispo Branch, in case number F000321664, Respondent was convicted, following her plea of no contest, of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony. On March 28, 2002, the court suspended imposition of sentence and placed Respondent on formal probation for three years on terms and conditions that included service of 180 days in county jail, with credit for 69 days, completion of 40 hours of community service, completion of a substance abuse counseling program, and payment a \$200 fine.

5. The facts and circumstances surrounding the conviction are that on December 14, 2001, using a one-inch keychain knife, Respondent stabbed the victim in the back during a fight between the victim and Respondent's female friend. In a letter to the Board, Respondent explained that she carried the knife for protection, and that she used it to defend her friend, who was on the ground while the other woman was on top of her. The resulting half-inch-deep laceration required emergency treatment and several stitches. Respondent was 19 years old at the time and had been drinking alcoholic beverages.

6. The conviction is substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770, in that it involves violence toward another person and, therefore, Respondent's conduct evidences present or potential unfitness to discharge the duties of a pharmacy technician.

7. Respondent complied with the terms and conditions of probation, and on May 17, 2011, the court granted Respondent's motion pursuant to Penal Code section 1203.4, setting aside her plea and dismissing the criminal complaint.

8. In aggravation, on June 21, 2011, in the Superior Court, County of San Luis Obispo, Grover Beach Branch, in case number M000460267, Respondent was convicted, following her plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level higher than .08 percent), a misdemeanor. The court suspended imposition of sentence and placed Respondent on probation for three years on terms and conditions that included service of two days in county jail, payment of \$2,300 in fines and fees, and completion of a three-month first offender substance abuse counseling program.

LEGAL CONCLUSIONS

1. Grounds exist to deny Respondent's application pursuant to Business and Professions Code sections 475 and 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1770, in that she suffered a conviction substantially related to the qualifications, functions and duties of a pharmacy technician, by reason of factual finding numbers 4, 5, and 6.

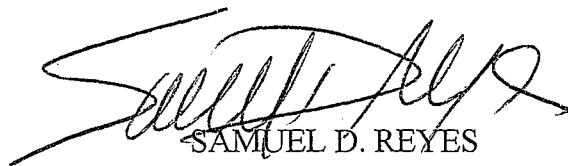
2. Grounds exist to deny Respondent's application pursuant to Business and Professions Code section 480, subdivision (a)(3), in that she engaged in unprofessional conduct when she assaulted another person on December 14, 2001, by reason of factual finding numbers 5 and 6.

3. All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered. In Respondent's behalf, the assault conviction occurred about nine years ago when she was young and under the influence of alcoholic beverages, and the conviction has been set aside pursuant to Penal Code section 1203.4. On the other hand, she appears to continue to have problems with alcoholic beverages, a contributing factor to the 2002 conviction, and was not at the hearing to present evidence of her present rehabilitation efforts. Accordingly, the order that follows is necessary for the protection of the public.

ORDER

Respondent Ailsa Jean Hunter's application for registration as a pharmacy technician is denied.

DATED: 10/24/01



SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 3623

13 **AILS A JEAN HUNTER**
14 **P.O. Box 923**
Grover Beach, CA 93483

STATEMENT OF ISSUES

15 **Pharmacy Technician Applicant**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 28, 2008, the Board of Pharmacy, Department of Consumer
23 Affairs (Board) received an application for registration as a Pharmacy Technician from Ailsa Jean
24 Hunter (Respondent). On or about October 20, 2008, Ailsa Jean Hunter certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on November 10, 2009.

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JURISDICTION

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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.

STATUTORY PROVISIONS

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6 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 5. Section 480 of the Code states:

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

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

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21 "(3) Done an act which if done by a licentiate of the business or profession in
22 question, would be grounds for suspension or revocation of license."

23 6. Section 475 of the Code states:

24 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
25 govern the denial of licenses on the grounds of:

26

27 "(2) Conviction of a crime.

28 ...

1 "(4) Commission of any act which, if done by a licentiate of the business or
2 profession in question, would be grounds for suspension or revocation of license."

3 **REGULATORY PROVISIONS**

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

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Criminal Conviction)**

13 8. Respondent's application is subject to denial under Code sections 475 and 480,
14 subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in
15 that Respondent was convicted of a crime substantially related to the qualifications, functions or
16 duties of a pharmacy technician applicant, as follows:

17 a. On or about March 12, 2002, after pleading guilty, Respondent was convicted
18 of one felony count of violating Penal Code section 245, subdivision (a)(1) [assault against a
19 person], in the criminal proceeding entitled *The People of the State of California vs. Hunter*
20 (Super. Ct. San Luis Obispo County, 2002, No. F000321664). The Court sentenced Respondent
21 to 180 days in custody and placed her on supervised felony probation with certain terms and
22 conditions. The circumstances surrounding the conviction are that on or about December 14,
23 2001, San Luis Obispo Sheriff Officers arrested Respondent for assaulting a person with a knife.
24 Respondent's assault left the victim with a laceration to the lower back that was twelve to
25 fourteen inches in length and one-half inch deep. The victim received stitches to close the
26 laceration.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

9. Respondent's application is subject to denial under Code section 480, subdivision (a)(3) on the grounds of unprofessional conduct. The circumstances are that Respondent committed acts which constitute unprofessional conduct when she assaulted a person with a knife resulting in bodily injury. Complainant refers to, and by this reference incorporates the allegation set forth above in paragraph 9, subparagraph (a), 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 the application of Respondent for a Pharmacy Technician Applicant; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/29/10

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

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