

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

In the Matter of the Statement of Issues
Against:

SEBASTION ALONZO
1111 Beryl Avenue, Apt. A
Mentone, California 92359,

Respondent.

Case No. 3726

OAH No. 2011010765

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on July 21, 2011. Complainant was represented by Katherine M. Messana, Deputy Attorney General. Respondent represented himself and was provided with the services of two interpreters in American Sign Language.

Documentary and oral evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On or about September 14, 2009, the Board of Pharmacy, Department of Consumer Affairs, received an Application for Registration as a Pharmacy Technician from respondent Sebastian Alonzo, also known as Sebastian Villegas Alonzo. Respondent certified under penalty of perjury to the truth and accuracy of all of his statements, answers, and representations made in his application, including supplementary statements.

2. Question No. 6 on the registration application, in part, asked, "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." In response to Question No. 6, respondent marked the box for and answered, "Yes." He attached a written explanation to his registration application, stating he is a registered sex offender and was convicted for failing to register as a sex offender.

3. On April 13, 2010, the Board of Pharmacy denied respondent's application for registration as a pharmacy technician due to his criminal convictions. On or about April 29, 2010, respondent filed a timely appeal of the denial of his registration application and requested a hearing.

4. On December 2, 2010, the Statement of Issues, Case No. 3726, was made and filed by Virginia Herold in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

5. Subsequently, respondent filed, or was deemed to have filed, a Notice of Defense pursuant to Government Code sections 11505 and 11506, acknowledging receipt of the Statement of Issues and requesting a hearing to permit him the opportunity to present evidence that his application for registration should be granted.

6. (A) On or about December 15, 1989, before the Superior Court of California, County of San Bernardino, in *People v. Sebastian Villegas Alonzo*, Case No. SCR50945, respondent was convicted on his plea of guilty of committing a lewd and lascivious act upon the body of a child under the age of 14 years with the intent to arouse, appeal to, or gratify the sexual desires of himself and the child in violation of Penal Code section 288, subdivision (a), a felony and crime involving moral turpitude.

(B) As a result of his plea, the Superior Court withheld pronouncement of judgment and placed respondent on formal probation for five years on condition, in part, that he serve 365 days in the San Bernardino County Jail with credit for having served 98 days in custody, not consume or possess any alcoholic beverage, not use or possess any controlled substance without a medical prescription, attend Alcoholics Anonymous while in jail, complete an alcohol counseling program upon release from jail, attend individual counseling, not associate with the victim or persons under the age of 18 years, and register his address with the appropriate city or county law enforcement agency. The Superior Court also ordered respondent to pay a restitution fine of \$4,000 but stayed the payment of the restitution fine.

(C) The facts and circumstances of respondent's conviction for lewd and lascivious conduct were that, on or between June 1, 1989, and June 10, 1989, he committed lewd acts upon a child under the age of 14 years. The victim of respondent's crime was the daughter of his ex-wife.

(D) Based on Business and Professions Code section 4311, subdivision (c)(4), respondent's conviction for lewd and lascivious conduct under Penal Code section 288 was for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

7. (A) On or about December 15, 1989, before the Superior Court of California, County of San Bernardino, in *People v. Sebastian Villegas Alonzo*, Case No. SCR50892,

respondent was convicted on his plea of guilty of receiving stolen property in violation of Penal Code section 496, a felony and crime involving moral turpitude.

(B) As a result of his plea, the Superior Court withheld pronouncement of judgment and placed respondent on supervised or formal probation for five years on condition, in part, that he serve 365 days in the San Bernardino County Jail with credit for having served 62 days in custody. The Superior Court ordered that respondent serve the one-year jail sentence concurrent with the one-year jail sentence for his conviction for lewd and lascivious conduct. In addition, the Superior Court ordered respondent to pay a restitution fine of \$2,000 but stayed the payment of the restitution fine pending successful completion of probation.

(C) The facts and circumstances of respondent's conviction for receiving stolen property were that, on or about November 26, 1989, he unlawfully entered an inhabited dwelling with the intent to commit larceny or another felony offense. Respondent was allowed to plead guilty to receiving stolen property pursuant to a plea bargain.

(D) Based on the elements of his crime, respondent's conviction for receiving stolen property was for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician under California Code of Regulations, title 16, section 1770. Respondent's offense involved complicity in theft and dishonesty and thus evidences to a substantial degree a present or potential unfitness to perform the functions of a registered pharmacy technician in a manner consistent with the public health, safety, or welfare.

8. (A) Approximately three years later, on August 19, 1992, respondent admitted that he had violated his formal probation. As a result, the Superior Court pronounced judgment on his conviction for lewd and lascivious conduct and sentenced respondent to be committed to state prison for six years with credit for having served 403 days and to pay the \$4,000 restitution fine that was originally stayed.

(B) On August 19, 1992, respondent also admitted that he had violated his formal probation for his conviction for receiving stolen property. As a result, the Superior Court pronounced judgment on his conviction and sentenced respondent to be committed to state prison for eight months with credit for having served 403 days and to pay the \$2,000 restitution fine that was originally stayed.

(C) The Superior Court ordered that respondent's prison sentence for his probation violation for his conviction for receiving stolen property offense run consecutively to the state prison sentence for the probation violation for his conviction for lewd and lascivious conduct. In or about 1995, respondent was released from prison.

9. (A) On or about March 7, 2002, before the Superior Court of California, County of San Bernardino, San Bernardino District, in *People v. Sebastian Alonzo*, Case No. MSB060419, respondent was convicted on his plea of guilty of threatening a public officer in violation of Penal Code section 71, a misdemeanor and crime involving moral turpitude.

(B) As a result of his plea, the court withheld pronouncement of judgment and placed respondent on conditional and revocable release for three years on condition, in part, that he serve 30 days in the San Bernardino County Jail with credit for having served 18 days in custody, violate no law, pay a victim restitution fine of \$110, and not annoy or harass the victim. In lieu of paying the victim restitution fine, the court ordered that respondent serve time in jail which was included in the 30-day jail sentence.

(C) The facts and circumstances of respondent's conviction for threatening a public officer were that, on or about January 11, 2002, he caused or attempted to cause an officer or employee of an educational institution or public agency to do, or to refrain from doing, an act in performance of her duty, by threatening to inflict an injury upon that person and it reasonably appeared to that person that respondent could carry out his threat. Respondent threatened a state employee.

(D) Based on the elements of his crime, respondent's conviction for threatening a public officer was for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician under California Code of Regulations, title 16, section 1770. Respondent's offense involved a threat of violence and thus evidences to a substantial degree a present or potential unfitness to perform the functions of a registered pharmacy technician in a manner consistent with the public health, safety, or welfare.

10. Respondent explained that, on or about January 11, 2002, he went to the vocational services office at the City of San Bernardino to research job opportunities. While at the state office, he had a conversation with a student about the government. Respondent suggested he was unjustly accused and convicted of threatening a job counselor for merely having a conversation.

11. (A) On or about June 13, 2008, before the Superior Court of California, County of San Bernardino, in *People v. Sebastian Alonzo*, Case No. FSB054804, respondent was convicted on his plea of guilty of failing to register as a sex offender in violation of Penal Code section 290, subdivision (g)(2), a felony and crime involving moral turpitude.

(B) As a result of his plea, the Superior Court withheld pronouncement of judgment and placed respondent on supervised or formal probation for three years on condition, in part, that he serve 40 days in the San Bernardino County Jail with credit for having served the 40 days in custody, violate no law, report to the probation officer every 14 days, cooperate with the probation officer in a plan of rehabilitation, keep the probation officer informed of his residence and cohabitants, participate in a counseling program as directed by the probation officer, register his address with the appropriate city or county law enforcement agency, and not associate with known convicted felons or anyone actively engaged in criminal activity,

(C) The facts and circumstances of respondent's conviction for failing to register as a sex offender were that, on or about February 16, 2006, he was required to

register his address annually within five working days of his birthday due to his 1989 conviction for lewd and lascivious acts with a child under the age of 14 years and failed to register as required under Penal Code section 290, subdivision (g)(2). Respondent testified that he was homeless and did not have a stable abode and did not know that he was still required to register his address.

(D) Based on the elements of his crime, respondent's conviction for failing to register as a sex offender was for a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician under California Code of Regulations, title 16, section 1770. Respondent's offense involved the failure to follow or to abide by the law and thus evidences to a substantial degree a present or potential unfitness to perform the functions of a registered pharmacy technician in a manner consistent with the public health, safety, or welfare.

12. (A) Respondent seeks registration as a pharmacy technician because he wants to earn a living and be a socially responsible citizen. Presently, he is not working but, in the past, he has performed landscaping and car detail work. He has always tried to support himself and wants a chance to work as a registered pharmacy technician.

(B) On August 11, 2009, respondent completed the eight months of course work at the Regional Occupational Center in Redlands to be eligible to apply for a pharmacy technician registration. He received his work experience or training at a Walgreens pharmacy.

(C) In or about 1999, respondent was discharged from parole supervision by the Department of Corrections. In June 2001, he completed probation for his 2008 conviction for failing to register as a felony sex offender. He has no new convictions and is not on probation for any offense.

13. With respect to the allegations in the Statement of Charges, respondent did not deny his convictions and stated he had no excuses for his past conduct. However, he testified that it has been a long time since his first convictions and he cannot recall all of the facts of his crimes or convictions. Respondent stated that he remembered his 1989 convictions for lewd and lascivious conduct and receiving stolen property only after reviewing the court records in this proceeding. He testified that the victim of his sexual conviction was the daughter of his ex-wife but that he could not remember the facts of his receiving stolen property conviction. Respondent claimed he could not recall going to court for his conviction for threatening a public officer but then insisted he was placed on summary, and not formal, probation for this conviction. He suggested that he was having an innocent conversation at the employment office and did not threaten a public officer. As for his last conviction, respondent contended that failing to register as a felony sex offender is not a real crime.

14. Respondent is now 48 years old. He graduated from Redlands High School in 1981. Respondent is single and has three children, two of whom are adults and the third lives with her mother.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to deny respondent's registration application pursuant to Business and Professions Code sections 480 and 4301, subdivision (1), in that respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a licensee under the Pharmacy Law, as set forth in Findings 6 – 11 above.

2. Grounds exist to deny respondent's registration application pursuant to Business and Professions Code sections 480, subdivision (a)(3), in that respondent committed acts that if done by a licentiate under the Pharmacy Law would be grounds for suspension or revocation of the license, as set forth in Conclusion of Law 1 and Findings 6 – 11 above.

3. Discussion—In this matter, over the past 22 years, respondent has been convicted of three felonies and one misdemeanor that are all substantially related to the qualifications, functions, and duties of a licensee under the Pharmacy Law. All of respondent's convictions involved serious crimes, including his misdemeanor conviction in 2002 which was for threatening a public officer.

When considering the proper discipline of a Board licensee who has been convicted of crimes, the Board's Disciplinary Guidelines require an evaluation of the licensee under certain rehabilitation criteria to determine his present eligibility for a license. (See Cal. Code Regs., tit. 16, § 1769.) Those same criteria apply when evaluating an applicant for license or registration under the Pharmacy Law who has suffered convictions. The criteria include the nature and severity of the crimes, evidence of the applicant's acts subsequent to his crimes, compliance with the terms of parole or probation, and evidence of rehabilitation submitted by the applicant.

Here, respondent's last conviction for failing to register as a felony sex offender is recent, having occurred three years ago and for which his probation just ended in June 2011. It has been only one month since he was discharged from probation. Respondent, in fact, has spent significant time in the last 22 years either under probation or parole supervision or

incarcerated in jail or state prison. He has struggled to be financially self-sufficient by working in landscaping and car detail jobs but, more significantly, he did successfully complete the course of study and work experience necessary to apply for a pharmacy technician registration. He admits his history of convictions. However, respondent's claims that he cannot recall the facts of his convictions, his failure to acknowledge having committed his offense of threatening a public officer, and his assertion that his failure to register as a felony sex offender was not a true crime harm his case for licensure. One cannot successfully assert that he is rehabilitated from his convictions if he does not acknowledge his crimes much less show remorse for his past wrongful conduct. Moreover, in light of his 22-year criminal history, which involves not only serious felonies but also a recent conviction in 2008, the mere passage of time did not demonstrate respondent's rehabilitation. The nature and recency of his convictions behoove respondent in this license application proceeding to present evidence of his present ability to obey the law without probation supervision and his efforts to improve and change his life and attitude. Respondent failed to make that showing and, as such, he cannot be considered rehabilitated from his convictions. Under these circumstances, public health, safety, and welfare require the denial of his registration application at this time.

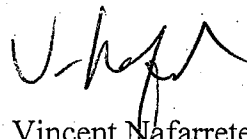
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WHEREFORE, the following Order is hereby made:

ORDER

The application for registration as a pharmacy technician filed by respondent Sebastian Alonzo, also known as Sebastian Villegas Alonzo, with the Board of Pharmacy is denied, based on Conclusions of Law 1 – 3 above, jointly.

Dated: August 18, 2011



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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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. 3726

12 **SEBASTION ALONZO**
1111 Beryl Avenue, Apt. A
13 Mentone, CA 92359
14 **Applicant for Pharmacy Technician**
Registration

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

- 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 2. On or about September 14, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a/an Applicant for Pharmacy Technician Registration from
23 Sebastian Alonzo (Respondent). On or about August 11, 2009, Sebastian Alonzo certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on April 13, 2010.

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1 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
2 Section 482.

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

6 5. Section 4301 states:

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

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

14

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.”

4 6. Section 4311, subdivision (c)(4), states:

5 "A conviction of any crime referred to in Section 4301, or for violation of Section 187, 261,
6 or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the
7 qualifications, functions, or duties of a licensee of the board."

8 **REGULATORY PROVISIONS**

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

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."

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of Substantially Related Crimes)**

18 8. Respondent's application is subject to denial under section 480, subdivision (a)(1),
19 and 4301, subdivision (I), in that he has been convicted of substantially related crimes as follows:

20 a On or about June 13, 2008, after pleading guilty, Respondent was convicted of one
21 felony count of violating Penal Code section 290, subdivision (G)(2) [failure to register as a
22 felony sex offender] in the criminal proceeding entitled *The People of the State of California v.*
23 *Sebastian Alonzo* (Super. Ct. San Bernardino County, 2006, No. FSB054804). The Court
24 sentenced Respondent to 40 days in San Bernardino County jail and placed him on 3 years formal
25 probation.

26 b. On or about March 7, 2002, after pleading guilty, Respondent was convicted of one
27 misdemeanor count of violating Penal Code section 71 [threatening a public officer] in the
28 criminal proceeding entitled *The People of the State of California v. Sebastian Alonzo* (Super. Ct.,

1 San Bernardino County, 2002, No. MSB060419). The Court sentenced Respondent to 30 days in
2 San Bernardino County jail and placed him on 3 years probation.

3 c. On or about December 15, 1989, after pleading guilty, Respondent was convicted of
4 one felony count of violating Penal Code section 496 [receiving known stolen property] in the
5 criminal proceeding entitled *The People of the State of California v. Sebastian Alonzo* (Super. Ct.
6 San Bernardino County, 1989, No. SCR50892). The Court sentenced Respondent to 365 days in
7 San Bernardino County jail and placed him on 5 years formal probation with terms and
8 conditions. On or about August 19, 1992, Respondent violated his probation and the Court
9 sentenced him to 8 months in state prison.

10 d. On or about December 15, 1989, after pleading guilty, Respondent was convicted of
11 one felony count of violating Penal Code section 288, subdivision (a) [lewd or lascivious acts
12 with a child under 14] in the criminal proceeding entitled *The People of the State of California v.*
13 *Sebastian Alonzo* (Super. Ct. San Bernardino County, 1989, No. SCR50945). The Court
14 sentenced Respondent to 365 days in San Bernardino County jail and placed him on 5 years
15 formal probation with terms and conditions. On or about August 19, 1992, Respondent violated
16 his probation and the Court sentenced him to 6 years in state prison.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Acts Which if Done by a Licentiate Would Constitute Grounds for Discipline)**

19 8. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A),
20 in conjunction with section 4301, subdivision (f), and section 4301, subdivision (l), in that he has
21 committed acts involving moral turpitude and has been convicted of substantially related crimes.
22 Complainant refers to and incorporates all the allegations contained in paragraph 7,
23 subparagraphs a-d, as though set forth fully.

24 **PRAYER**

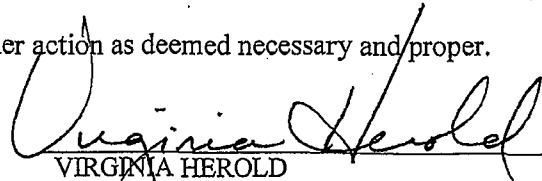
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Denying the application of Sebastian Alonzo for a Applicant for Pharmacy
28 Technician Registration; and

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

DATED: 12/2/10



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

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