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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:

Case No. 3994

OAH No. L-2011061485

DEFAULT DECISION AND ORDER

**NIMA HEIDARY
15 Rollingwood Drive
Rolling Hills Estates, CA 90274
Pharmacy Technician Applicant**

[Gov. Code, § 11520]

Respondent.

FINDINGS OF FACT

1. On or about June 2, 2011, 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. 3994 against Nima Heidary ("Respondent") before the Board of Pharmacy.
2. On or about January 29, 2010, Respondent filed an application dated January 25, 2010, with the Board of Pharmacy to obtain a Pharmacy Technician registration number.
3. On or about October 26, 2010, the Board issued a letter denying Respondent's application for a Pharmacy Technician registration number. On or about November 9, 2010, Respondent appealed the Board's denial of his application and requested a hearing.
4. On or about June 14, 2011, Gilda Sanchez, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 3994, Statement to

1 Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7,
2 Respondent/Applicant's Notice of Designation of Counsel, and Respondent/Applicant's Notice of
3 Withdrawal of Request for Hearing to Respondent's address on the application form, which was
4 and is: 15 Rollingwood Drive, Rolling Hills Estates, California, 90274.

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

7 6. On or about August 30, 2011, Rebeca Garcia, an employee of the Department of
8 Justice, served by Certified and First Class Mail a copy of the Notice of Hearing to Respondent's
9 address on the application form, which was and is: 15 Rollingwood Drive, Rolling Hills Estates,
10 California, 90274. The Notice of Hearing informed the Respondent that an administrative
11 hearing in this matter was scheduled for January 23, 2012. Respondent failed to appear at that
12 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.

10 Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on
evidence on file herein, finds that the allegations, in Statement of Issues No. 3994 are true.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Nima Heidary has subjected his
3 application for a Pharmacy Technician registration number to denial.

4 2. Service of Statement of Issues No. 3994 and related documents was proper and in
5 accordance with the law.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure
8 based upon the following violations alleged in the Statement of Issues:

9 **a. Conviction for a Substantially Related Crime.** Respondent's application is
10 subject to denial under section 480, subdivision (a)(1) of the Code in that he was convicted of a
11 crime that is substantially related to the qualifications, functions, and duties of a pharmacy
12 technician. The circumstances are as follows:

13 i. On or about November 27, 2006, in the criminal matter entitled *People of*
14 *the State of California v. Nima Heidary* (Los Angeles County Superior Court Case No.
15 6MP10682), Respondent was convicted of violating Vehicle Code section 23152, subdivision (b),
16 driving with a blood alcohol level .08% or above, and violating Vehicle Code section 14601,
17 subdivision (a), driving with a suspended drivers license, both misdemeanors. Respondent also
18 admitted to having suffered two prior driving under the influence related convictions. Respondent
19 was sentenced to probation for a period of five years. Among the terms and conditions of
20 probation, he was ordered to serve one-hundred twenty days in jail and pay court fines

21 **b. Conviction for a Substantially Related Crime.** Respondent's application is
22 subject to denial under section 480, subdivision (a)(1) of the Code in that he was convicted of a
23 crime that is substantially related to the qualifications, functions, and duties of a pharmacy
24 technician. The circumstances are as follows:

25 i. On or about April 20, 2004, in the criminal matter entitled *People of the*
26 *State of California v. Nima Heidary* (Los Angeles County Superior Court Case No. 3SB08903),
27 Respondent was convicted of violating Vehicle Code section 23103, reckless driving, and was
28 sentenced pursuant to Vehicle Code section 23103.5, because the reckless driving was alcohol

1 related. Respondent was sentenced to three years of probation. Among the terms and conditions
2 of probation, Respondent was ordered to complete fourteen hours of work with the Cal-Trans
3 work alternative program, pay court fines, attend an alcohol education program through the
4 Department of Motor Vehicles, and obey all laws. The basis for the conviction is that on or about
5 October 25, 2003, while driving under the influence of a central nervous system depressant and
6 marijuana, Respondent drove a motor vehicle and collided with another motor vehicle causing
7 injury to the other driver.

8 c. **Conviction for a Substantially Related Crime.** Respondent's application is
9 subject to denial under section 480, subdivision (a)(1) of the Code in that he was convicted of a
10 crime that is substantially related to the qualifications, functions, and duties of a pharmacy
11 technician. The circumstances are as follows:

12 i. On or about October 23, 2003, in the criminal matter entitled *People of*
13 *the State of California v. Nima Heidary* (Los Angeles County Superior Court Case No.
14 3SB06366), Respondent was convicted of violating Vehicle Code section 23103, reckless driving,
15 and was sentenced pursuant to Vehicle Code section 23103.5, because the reckless driving was
16 alcohol related. Respondent was sentenced to three years of probation. Among the terms and
17 conditions of probation, Respondent was ordered to complete seventy-seven hours of community
18 service work, pay court fines, attend an alcohol education program through the Department of
19 Motor Vehicles, and obey all laws.

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ORDER

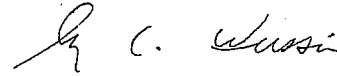
IT IS SO ORDERED that the application of Respondent Nima Heidary is hereby denied.

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 May 4, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF



By

STANLEY C. WEISSNER
Board President

DOJ docket number:LA2011500902
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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. 3994

12 **NIMA HEIDARY**
13 **15 Rollingwood Drive**
Rolling Hills Estates, CA 90274
14 **Pharmacy Technician Registration Number**
Applicant

STATEMENT OF ISSUES

15 Respondent.

16
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 January 29, 2010, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician Registration Number from Nima
23 Heidary ("Respondent"). On or about January 25, 2010, Nima Heidary certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on October 26, 2010.

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1 shall be considered substantially related to the qualifications,
2 functions or duties of a licensee or registrant if to a substantial
3 degree it evidences present or potential unfitness of a licensee or
4 registrant to perform the functions authorized by his license or
5 registration in a manner consistent with the public health, safety, or
6 welfare."

6. California Code of Regulations, title 16, section 1769, provides:

7 "(a) When considering the denial of a facility or personal license
8 under Section 480 of the Business and Professions Code, the board,
9 in evaluating the rehabilitation of the applicant and his present
10 eligibility for licensing or registration, will consider the following
11 criteria:

12 (1) The nature and severity of the act(s) or offense(s) under
13 consideration as grounds for denial.

14 (2) Evidence of any act(s) committed subsequent to the
15 act(s) or crime(s) under consideration as grounds for denial under
16 Section 480 of the Business and Professions Code.

17 (3) The time that has elapsed since commission of the act(s)
18 or crime(s) referred to in subdivision (1) or (2).

19 (4) Whether the applicant has complied with any terms of
20 parole, probation, restitution or any other sanctions lawfully
21 imposed against the applicant.

22 (5) Evidence, if any, of rehabilitation submitted by the
23 applicant..."

24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 (Conviction for a Substantially Related Crime)

26 7. Respondent's application is subject to denial under section 480, subdivision (a)(1)
27 of the Code in that he was convicted of a crime that is substantially related to the qualifications,
28 functions, and duties of a pharmacy technician. The circumstances are as follows:

8. On or about November 27, 2006, in the criminal matter entitled *People of the State
of California v. Nima Heidary* (Los Angeles County Superior Court Case No. 6MP10682),
Respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with
a blood alcohol level .08% or above, and violating Vehicle Code section 14601, subdivision (a),
driving with a suspended drivers license, both misdemeanors. Respondent also admitted to having
suffered two prior driving under the influence related convictions. Respondent was sentenced to
probation for a period of five years. Among the terms and conditions of probation, he was ordered
to serve one-hundred twenty days in jail and pay court fines.

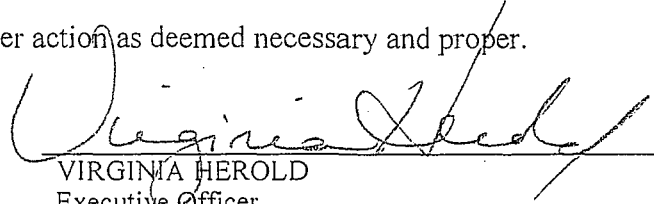
1 work, pay court fines, attend an alcohol education program through the Department of Motor
2 Vehicles, and obey all laws.

3 PRAYER

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

- 6 1. Denying the application of Nima Heidary for a Pharmacy Technician Applicant;
7 2. Taking such other and further action as deemed necessary and proper.

8 DATED: 6/2/11



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

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