

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

In the Matter of the Statement of Issues Against:

Case No. 4001

**TERESA H. BERNHARDT**  
115 11<sup>th</sup> Street, #6  
Manhattan Beach, CA 90266

OAH NO.: 2011070279

Respondent.

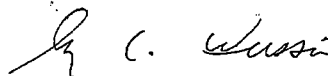
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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 CALIFORNIA



By

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STANLEY C. WEISSER  
Board President

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

In the Matter of the Statement of Issues  
Against:

TERESA H. BERNHARDT,

Respondent.

Case No. 4001

OAH No. 2011070279

**PROPOSED DECISION**

This matter came on regularly for hearing on January 18, 2012, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Complainant Virginia Herold was represented by Deputy Attorney General Randy Mailman. Respondent Teresa H. Bernhardt was present and represented herself.

Oral and documentary evidence was presented and the matter was submitted for decision on January 18, 2012.

**FACTUAL FINDINGS**

The Administrative Law Judge finds the following facts:

1. The Statement of Issues was issued by Complainant Virginia Herold in her official capacity as Executive Officer of the Board of Pharmacy (Board). Respondent filed a letter requesting a hearing.

2. On March 19, 2010, the Board received an application from Respondent for registration as a pharmacy technician. In the application Respondent answered "Yes" to a question of whether she had been convicted of a violation of law. She was instructed to attach an explanation. Respondent wrote that she was arrested in 2003 for being under the influence and has since completed an 18 month drug court program, attends Alcoholics Anonymous and has been clean and sober since October 22, 2003.

3. On January 12, 2004, Respondent was convicted on her plea of nolo contendere to violating Health and Safety Code section 11550, subdivision (a), being under

the influence of a controlled substance, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for three years on terms and conditions including that she pay fines and penalties, and was sentenced to serve 90 days in county jail, suspended, with 27 days credit.

4. The facts and circumstances are taken from a police report wherein the officer noted that on August 11, 2003, he observed Respondent driving at night without headlights and pulled her over. The officer observed behavior and symptoms upon which he concluded that Respondent was under the influence. The officer found a substance resembling cocaine and drug paraphernalia in Respondent's car.

5. Respondent testified generally about this and the other convictions noted below. She had used cocaine when she lived in Florida but, after moving to California in 1989, she no longer used cocaine. However, she had used methamphetamine since moving to California. She described the time of these events as blurry and that, due to her drug use she did not have a good memory of the events.

6. On May 8, 2002, Respondent was convicted on her plea of guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a felony. Respondent was placed on deferred entry of judgment for two years on terms and conditions including that she enroll in a drug program. Respondent completed the program by her court appearance on December 12, 2002. However, on July 28, 2003, Respondent was found in violation of her probation and placed on formal probation for one year. On November 6, 2003, Respondent was found in violation of her probation, and she was placed in the drug court program. On May 11, 2004, Respondent's probation was modified to include two weeks at the inpatient program in the Impact Module at the Twin Towers jail. She was later returned to the outpatient program and completed the drug court program. As a result, on December 7, 2004, the complaint was amended to be a misdemeanor pursuant to Penal Code section 17, subdivision (b)(5), probation was terminated, the plea of guilty was set aside and the case was dismissed pursuant to Penal Code section 1203.4.

7. The facts and circumstances underlying the conviction are taken from a police report wherein the officer noted that on December 25, 2001, he responded to a citizen complaint of an unfamiliar car parked for a long time near a vacant house. The officer observed Respondent alongside her vehicle sorting personal possessions inside and spoke to her at length. The officer observed behavior and symptoms upon which he concluded that Respondent was under the influence. In her possessions in Respondent's car the officer found a clear crystalline substance, several pills and drug paraphernalia.

8. On July 28, 2003, Respondent was convicted on her plea of guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a felony. Imposition of sentence was suspended and Respondent was placed on formal probation for three years on terms and conditions pursuant to Proposition 36 relating to drug court. Respondent completed the drug court program. As a result, on December 7, 2004, the complaint was amended to be a misdemeanor pursuant to Penal Code section 17, subdivision

(b)(5), probation was terminated, the plea of guilty was set aside and the case was dismissed pursuant to Penal Code section 1203.4.

9. The facts and circumstances are taken from a police report wherein the officer noted that on July 12, 2003, he responded to a citizen complaint of a suspicious car and people in a bank parking lot. The officer learned that Respondent was on probation for narcotics and asked if he could search the car. Respondent agreed to the search. In her possessions in Respondent's car the officer found a clear crystalline substance and drug paraphernalia. Respondent admitted to the officer that the substance was methamphetamine and that she had used methamphetamine that day.

10. On November 26, 2008, Respondent was convicted on her plea of guilty to violating Health and Safety Code section 23103, subdivision (a), reckless driving referred to as a dry reckless, a misdemeanor. Respondent was sentenced to pay fines and was given credit for one day served in county jail. Although the Statement of Issues alleges the conviction occurred on February 7, 2002, there was no evidence establishing that date, and no evidence explaining the long delay between the incident in 2002 and the conviction.

11. The facts and circumstances are taken from a police report wherein the officer noted that on January 3, 2002, he observed Respondent driving erratically and speeding and pulled her over. The officer observed behavior and symptoms upon which he concluded that Respondent was under the influence. A field blood alcohol test revealed a reading of 0.0, however Respondent admitted to having taken prescribed lithium earlier in the day.

12. On February 23, 1996, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for three years on terms and conditions including that she pay fines and penalties, attend an alcohol program, and serve two days in county jail with two days credit. The offense occurred on February 20, 1996.

13. In her direct examination, Respondent addressed her efforts at rehabilitation and only spoke generally of her past, stating she didn't wish to "shut the door" on her past, has done everything in her power to overcome it, and wanted to move on. A more complete picture was painted in her cross examination, however Respondent acknowledged that her memory of many events was poor, in part due to her drug use. She explained that one of the convictions (first saying it was in 1996 and, later, saying it was 2002) was the day that her dog died and she was very upset and emotional. At another time she described the 1996 incident as relating to being beaten by an abusive boyfriend, she was drunk, and was driving to the hospital when she pulled into a parking lot and passed out in her car. Respondent started using alcohol at age 14 and believes it became a problem by age 18 because she was drinking more than before. She later began using cocaine when she was living in Florida. Shortly after that, in 1989, she moved to Los Angeles. She then began using methamphetamine. Respondent testified that, in some of the incidents resulting in convictions, the drugs did not belong to her.

14. In Respondent's own words, "it doesn't take a rocket scientist to see that my life was a mess." She did not discuss the specific circumstances of her decision to become clean and sober, but established her sobriety date as October 22, 2003. She completed an 18-month rehabilitation program. Respondent has attended Alcoholics Anonymous meetings and has a sponsor.

15. Respondent has worked in the horse racing field as a rider and trainer and has been licensed by the California Horse Racing Board. There has been no discipline imposed against that license. For the last several years she has worked as an exercise rider and has helped run the business of a racing stable, including being responsible for payroll and supervising employees. In November 2011 she suffered a broken clavicle and has reached the conclusion that she can't continue to do that job as she has in the past.

16. In 2009 Respondent enrolled in college in a pharmacy technician program. As part of her training she worked at a CVS retail pharmacy where she was responsible for handling controlled substances. When she completed her training she was offered a job if she gets her Board registration. Respondent completed her pharmacy technician program in July 2010.

17. Complainant established that a pharmacy technician would be able to physically handle all controlled substances in a pharmacy under the general supervision of a pharmacist.

## LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. In this proceeding based on a Statement of Issues, the burden of proof is on the Respondent, by a preponderance of the evidence, to establish she is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167.)

2. Under Business and Professions Code section 480, subdivision (a)(1), the Board may deny a license application if the applicant has been convicted of a crime, included a plea of guilty or nolo contendere. Under subdivision (a)(3)(B), the conviction must be of a crime "substantially related to the qualifications, functions or duties" of the profession for which the license is sought.

3. Under California Code of Regulations (CCR), title 16, section 1770, relating to licenses or registrations issued by the Board, "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.”

4. Claimant cited Business and Professions Code section 4301, subdivision (l), to support the argument that Respondent’s convictions are for crimes that are substantially related to the qualifications, functions or duties of a registrant. Under that section, a conviction for violating state drug laws relating to controlled substances or dangerous drugs is considered conclusive evidence of unprofessional conduct under the Pharmacy Law. Similarly, under subdivision (k), it is unprofessional conduct for a Board licensee to have a conviction of more than one misdemeanor or any felony “involving the use, consumption or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.”

5. Cause exists to deny the application of Respondent for registration as a pharmacy technician for conviction of crimes, for the reasons set forth in Factual Findings 2 through 12 and Legal Conclusions 1 through 4.

6. Under CCR, title 16, section 1769, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and her present eligibility for registration:

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

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

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

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

“(5) Evidence, if any, of rehabilitation submitted by the applicant.”

7. The evidence of Respondent’s convictions reveals unlawful acts related to drug or alcohol use from 1996 through 2003 which, if she were licensed by the Board would be considered as unprofessional conduct. By her own testimony, Respondent acknowledged that she had a serious abuse problem. Respondent became clean and sober on October 23, 2003. Her sobriety since then is established primarily by her own testimony, as various documents she submitted were objected to as hearsay and, therefore, can be used only to


support or explain other evidence.<sup>1</sup> Even if that evidence was considered for all purposes, it does not carry enough weight to counteract the length and significance of Respondent's unlawful conduct. To establish rehabilitation from such a history would require more substantial and convincing evidence of rehabilitation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application for registration as a pharmacy technician of Respondent Teresa H. Bernhardt is denied.

DATED: February 16, 2012.

  
DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Under Government Code section 11513, subdivision (d), hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding.

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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. 4001

12 **TERESA HEIMBRAND BERNHARDT**  
13 **115 11th Street, #6**  
**Manhattan Beach, CA 90266**  
14 **Pharmacy Technician Registration Number**  
**Applicant**

**STATEMENT OF ISSUES**

15 Respondent.

16 Complainant alleges:  
17

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 March 19, 2010, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Pharmacy Technician Registration Number from Teresa  
23 Heimbrand Bernhardt ("Respondent"). On or about January 19, 2010, Teresa Heimbrand  
24 Bernhardt certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. The Board denied the application on November 22, 2010.

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1 JURISDICTION

2 3. This Statement of Issues is brought before the Board of Pharmacy ("Board"),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 of the Code provides, in pertinent part:

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

9 (1) Been convicted of a crime. A conviction within the  
10 meaning of this section means a plea or verdict of guilty or a  
11 conviction following a plea of nolo contendere. Any action that a  
12 board is permitted to take following the establishment of a  
13 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.

14 (2) Done any act involving dishonesty, fraud, or deceit with  
the intent to substantially benefit himself or herself or another, or  
substantially injure another.

15 (3) (A) Done any act that if done by a licentiate of the  
16 business or profession in question, would be grounds for suspension  
or revocation of license.

17 (B) The board may deny a license pursuant to this subdivision  
18 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.

19 (b) Notwithstanding any other provision of this code, no  
20 person shall be denied a license solely on the basis that he or she  
21 has been convicted of a felony if he or she has obtained a certificate  
22 of rehabilitation under Chapter 3.5 (commencing with Section  
23 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has  
24 been convicted of a misdemeanor if he or she has met all applicable  
requirements of the criteria of rehabilitation developed by the board  
to evaluate the rehabilitation of a person when considering the  
denial of a license under subdivision (a) of Section 482..."

25 REGULATORY PROVISIONS

26 5. California Code of Regulations, title 16, section 1770, provides:

27 "For the purpose of denial, suspension, or revocation of a personal  
28 or facility license pursuant to Division 1.5 (commencing with  
Section 475) of the Business and Professions Code, a crime or act

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."

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

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

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

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

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

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

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

#### 25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

##### 26 **(Conviction for a Substantially Related Crime)**

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

8. On or about January 12, 2004, in the criminal matter entitled *People of the State of  
California v. Teresa Heimrand Bernhardt*, Los Angeles County Superior Court case number GA  
054306, Respondent was convicted of violating California Health and Safety Code section 11550,  
being under the influence of a controlled substance, a misdemeanor. Respondent was placed on  
probation for a period of three years, was ordered to pay court fines, and was sentenced to ninety  
days in the county jail. Respondent was further ordered to attend a three month outpatient drug

1 treatment program. On or about December 16, 2004, the matter was dismissed pursuant to Penal  
2 Code section 1203.4.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Conviction for a Substantially Related Crime)**

5 9. Respondent's application is subject to denial under section 480, subdivision (a)(1)  
6 of the Code in that she was convicted of a crime that is substantially related to the qualifications,  
7 functions, and duties of a pharmacy technician. The circumstances surrounding the conviction  
8 are as follows:

9 10. On or about May 8, 2002, in the criminal matter entitled *People of the State of*  
10 *California v. Teresa Heimrand Bernhardt*, Los Angeles County Superior Court case number GA  
11 048307, Respondent entered a plea of guilty to violating California Health and Safety Code  
12 section 11377, subdivision (a), possession of a controlled substance, felony. Respondent was  
13 granted an eighteen month deferred entry of judgment and ordered to participate in a drug  
14 treatment program. On July 28, 2003, after Respondent violated the terms of the deferred entry of  
15 judgment agreement, judgment entered, and Respondent was sentenced to one year of formal  
16 probation pursuant to Proposition 36. On November 6, 2011, after Respondent failed to comply  
17 with Proposition 36, Respondent was terminated from the program, and placed on a standard  
18 grant of probation. Respondent's probation was extended for an additional eighteen months, and  
19 she was ordered to participate in drug court. On or about December 7, 2004, the matter was  
20 dismissed pursuant to PC 1203.4.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Conviction for a Substantially Related Crime)**

23 11. Respondent's application is subject to denial under section 480, subdivision (a)(1)  
24 of the Code in that she was convicted of a crime that is substantially related to the qualifications,  
25 functions, and duties of a pharmacy technician. The circumstances surrounding the conviction  
26 are as follows:

27 12. On or about July 28, 2003, in the criminal matter entitled *People of the State of*  
28 *California v. Teresa Heimrand Bernhardt*, Los Angeles County Superior Court case number GA

1 053976, Respondent was convicted of violating California Health and Safety Code section 11377,  
2 subdivision (a), possession of a controlled substance, felony. Respondent was sentenced to  
3 probation for a period of three years pursuant to Proposition 36. On December 7, 2004, the matter  
4 was dismissed pursuant to Penal Code section 1203.4.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Conviction for a Substantially Related Crime)**

7 13. Respondent's application is subject to denial under section 480, subdivision (a)(1)  
8 of the Code in that she was convicted of a crime that is substantially related to the qualifications,  
9 functions, and duties of a pharmacy technician. The circumstances surrounding the conviction  
10 are as follows:

11 14. On or about February 7, 2002, in the criminal matter entitled *People of the State of*  
12 *California v. Teresa Heimrand Bernhardt*, Los Angeles County Superior Court case number  
13 CN140111, Respondent was convicted of violating California Vehicle Code section 23103,  
14 reckless driving, a misdemeanor.

15 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Conviction for a Substantially Related Crime)**

17 15. Respondent's application is subject to denial under section 480, subdivision (a)(1)  
18 of the Code in that she was convicted of a crime that is substantially related to the qualifications,  
19 functions, and duties of a pharmacy technician. The circumstances surrounding the conviction  
20 are as follows:

21 16. On or about February 23, 1996, in the criminal matter entitled *People of the State*  
22 *of California v. Teresa Heimrand Bernhardt*, Los Angeles County Superior Court case number  
23 CN037922, Respondent was convicted of violating California Vehicle Code section 23152,  
24 subdivision (a), driving under the influence, a misdemeanor. Respondent was sentenced to  
25 probation for a period of three years.

26 **PRAYER**

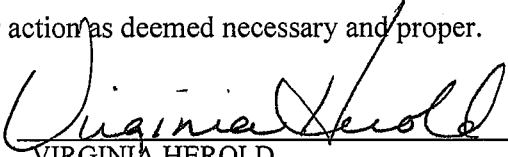
27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
28 and that following the hearing, the Board of Pharmacy issue a decision:

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1. Denying the application of Teresa Heimbrand Bernhardt for a Pharmacy Technician  
Registration Number;

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

DATED: 6/2/11



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

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