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

In the Matter of the Statement of Issues Against: **SILVIA NUNEZ, AKA SILVIA CARERES** 12548 Rocking Horse Ct. Victorville, CA 92392 Applicant Respondent.	Case No. 4097 OAH No. 2011120985

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 October 15, 2012.

It is so ORDERED on September 14, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
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: SILVIA NUNEZ, aka SILVIA CAZERES, Respondent.	Case No. 4097 OAH No. 2011120985

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in Los Angeles, California on June 26, 2012.

William D. Gardner, Deputy Attorney General, represented Complainant.

Silvia Nunez, also known as Silvia Cazeres (Respondent), represented herself.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Virginia Herold made the Statement of Issues in her official capacity as the Executive Officer of the Board of Pharmacy (Board).

2. Respondent filed her application, dated August 26, 2010, for registration as a pharmacy technician. The application was denied and this hearing ensued.

3. On September 25, 2009, in the United States District Court, Central District of California, case number 08-708-VBF, the court convicted Respondent based on her guilty plea to one felony count of violating Title 18 United States Code, section 4, misprision of a felony.[1] The court placed Respondent on probation for five years on terms and conditions, including that she serve the first six months on home detention, pay $400,000 in restitution,

[1] 18 USC § 4 provides, "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both."

and "not be employed in any capacity wherein she has custody, control or management of her employer's funds."

4. The plea agreement Respondent signed in connection with her guilty plea (part of Exhibit 5) sets forth the facts and circumstances of the crime. In that agreement, Respondent admitted the following:

> Between July 14, 2005 and September 7, 2007, in Los Angeles County, Sean Nunez ("Nunez") [Respondent's husband] knowingly and with the intent to defraud effected transactions with numerous access devices issued to other persons to receive payments during that period, the aggregate value of which was greater than $1,000. These transactions affected interstate commerce.
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> Specifically, Nunez was employed as a vehicle specialist at CarsDirect.com during the period of July 14, 2005, through September 7, 2007. At all times relevant herein, CarsDirect.com sold automobiles that may be used by customers throughout the United States. Through his employment, Nunez received "leads" for customers throughout the United States looking to purchase cars. [Respondent], with the intent to defraud, required these customers to place a "deposit" for the cars using their access devices. In all of these cases, the companies that issue the access devices operated in interstate commerce. CarsDirect[.com], however, did not require deposits. Instead, Nunez used the "deposit," and in some instances the full amount provided by the victim, for his own personal financial gain.
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> On or about July 14, 2005, [Respondent] and Nunez set up a private merchant account with the name "Direct Cars," which was used in Nunez's "deposit" scheme and to conceal the crime. Moreover, [Respondent] and Nunez registered "Direct Cars" as a business with the State of California.
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> On or about March 15, 2007, and August 2, 2007, Nunez sent to a victim in Georgia electronic mails requiring the victim to make a "deposit" on five vans the victim wished to purchase through CarsDirect.com. On or about August 7, 2007, Nunez caused the victim to send a $95,976 check by Federal Express, a commercial interstate carrier, from Georgia to California. [Respondent] deposited the check into their private merchant account to collect the funds and to conceal the scheme. The funds from the check were not in fact used to purchase the vans for the victim, but rather for Nunez's own personal financial gain. By this scheme, Nunez obtained over $750,000, but [Respondent] was only aware of the fraudulent nature of between $200,000 and $400,000 of the funds.
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> In September 2007, shortly after CarsDirect[.com] detected Nunez's scheme, [Respondent] took steps that concealed the crime, specifically

including changing the bank account associated with Direct Cars on or about September 13, 2007.

5. Respondent testified and spent much of the time attempting to minimize her involvement in the above-described fraudulent scheme. She testified she knew her husband was engaged in illegal conduct, but she, in essence, buried her head in the sand. Despite her admission to the contrary in her plea agreement, Respondent testified, "I did not ask and did not want to know" the nature of the illegal conduct. She repeated that assertion several times during her testimony. However, Respondent admitted helping her husband open up his business enterprise, setting up a postal box and a bank account under the name "Direct Cars," and receiving the check from the Georgia customer, endorsing the same, and depositing it into their account. Respondent testified that she knew her husband was doing something "unethical" but enjoyed the fruits of his misconduct when they moved from an apartment to a house, then moved to a bigger house and bought a Corvette.

6. Since her release from home detention, Respondent worked part time at a Stater Brothers pharmacy and now works full time at an independent pharmacy as a pharmacy clerk. Through her work she processes prescriptions, obtains patient information and, apparently in violation of her probation (See, the last sentence in Finding 3), "works the cash register." Her current employer knows nothing of Respondent's conviction or of the instant hearing.

7. Respondent was less than candid with the Board when it came to disclosing her criminal history. On her application, she admitted she had been convicted of a crime. However, in her letter of explanation (Exhibit 6) Respondent stated that she did not know charges had been filed against her until she went to jail to post bail for her husband. At that time, she was served with the felony complaint and told the Board, "The charges that were brought up against me is (*sic*) Misprision of a Felony." In truth, however, she had been charged with three felonies, aiding and abetting a fraudulent scheme, fraud by use of mail, and interstate fraud.

8. Respondent is still on probation and cannot apply for expungement of her conviction until she completes it. Respondent is a high school graduate, has taken two years of community college courses (no degree) and received her training to become a pharmacy technician through the Regional Occupational Program. Although Respondent has not told her employer about her conviction, she has disclosed it to her bible study group and to "church elders." Respondent is still married to her former co-defendant and supports the family through her current employment. Respondent enjoys her work as a pharmacy clerk and wants to advance herself by becoming a pharmacy technician.

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CONCLUSIONS OF LAW

1. Cause exists to deny Respondent's application for a pharmacy technician registration pursuant to Business and Professions Code section 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1770, on the grounds that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician, as set forth in Findings 3 through 5.

2. A crime is considered "substantially related" 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." (Cal. Code Regs., tit. 16, § 1770.) Respondent's crime falls within the definition of "substantial relationship." Her actions evidence a present or potential unfitness to discharge the duties of a registered pharmacy technician.

3. Cause exists to deny Respondent's application for a pharmacy technician registration pursuant to Business and Professions Code section 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, as set forth in Findings 3 through 5.

4. Cause exists to deny Respondent's application for a pharmacy technician registration pursuant to Business and Professions Code section 4300, subdivision (c), in conjunction with section 4301, subdivisions (f) and (l), in that she has committed acts of unprofessional conduct as set forth in Findings 3 through 5.

5. California Code of Regulations, title 16, section 1769, subdivision (a), provides that the Board, when considering the denial of a license or registration under Business and Professions Code section 480, will consider the following criteria in evaluating the rehabilitation of the applicant and her present eligibility for licensing:

> (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
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> (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.
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> (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
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> (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
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> (5) Evidence, if any, of rehabilitation submitted by the applicant.

6. Applying these criteria, Respondent's application must be denied. She was convicted of a crime that had an underlying fact pattern showing dishonesty. She was less than candid with the Board when disclosing her conviction and also failed to disclose her conviction to her current pharmacy employer. She refuses to accept full responsibility for her misconduct. She is still on probation and her conviction has not been expunged. Although Respondent has made some progress by advancing her education since her conviction, she failed to establish that she has sufficiently rehabilitated herself to ensure the Board that issuance of the applied-for registration would be consistent with the Board's duty to protect the public health, safety, and welfare.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Silvia Nunez, also known as Silvia Cazares, for registration as a pharmacy technician is denied.

Date: 7-19-12

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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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: **SILVIA NUNEZ, AKA SILVIA CAZARES** 12548 Rocking Horse Ct. Victorville, CA 92392 Applicant for Pharmacy Technician Registration Respondent.	Case No. 4097 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about September 21, 2010, the Board of Pharmacy (Board) received an application for a Pharmacy Technician Registration from Silvia Nunez (Respondent). On or about August 26, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 1, 2011.

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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.

STATUTORY PROVISIONS

4. Section 480 provides, 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.

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

. . . .

5. Section 4300, subdivision (c), provides, in pertinent part, that the Board "may refuse a license to any applicant guilty of unprofessional conduct."

6. Section 4301 provides, in pertinent part, that "unprofessional conduct includes, but is not limited to, any of the following:"

. . . .

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

(commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision.

. . . .

REGULATORY PROVISIONS

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

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Conviction)

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

a. On or about September 25, 2009, in the federal criminal matter entitled *United States v. Silvia Cazares* (C.D. Cal., 2008, No. CR 08-708-VBF), Respondent entered a plea of guilty and was convicted of one felony count of violating United States Code, title 18,

section 4 [misprision of a felony]. Respondent was fined and placed on probation for a period of five (5) years.

b. The circumstances surrounding the conviction are that from July 2005 to September 2007, Respondent's husband engaged in a scheme to defraud customers of the online service CarsDirect.com out of hundreds of thousands of dollars. Respondent had knowledge of her husband's unlawful activities; however, she failed to report them to law enforcement officials and, in fact, attempted to conceal those activities from law enforcement by manipulating certain bank accounts.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud or Deceit)

9. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that Respondent has engaged in acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 8, subparagraphs a and b, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

10. Respondent's application is subject to denial under section 4300, subdivision (c), in conjunction with section 4301, subdivisions (f) and (l), in that respondent has engaged in unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 8, subparagraphs a and b, inclusive, as though set forth fully herein.

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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 Silvia Nunez for registration as a Pharmacy Technician; and

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

DATED: 11/9/11

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

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