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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:

**ANGEL LOPEZ
27039 Cypress St.
Highland, CA 92346
Applicant for Pharmacy Technician
Registration**

Respondent.

Case No. 4164

OAH No. 2012110109

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about June 1, 2012, 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. 4164 against Angel Lopez (Respondent) before the Board of Pharmacy.

2. On or about October 11, 2010, Respondent filed an application dated August 7, 2010, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

3. On or about July 12, 2011, the Board issued a letter denying Respondent's application for Pharmacy Technician Registration. Sometime after that, in an undated letter, Respondent appealed the Board's denial of his application and requested a hearing.

1 4. On or about June 22, 2012, an employee of the Department of Justice, served by
2 Certified and First Class Mail a copy of the Statement of Issues No. 4164, Statement to
3 Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5,
4 11507.6, and 11507.7, and Notice from Respondent/Applicant to Respondent's address on the
5 application form, which was and is 27039 Cypress St., Highland, CA 92346. A copy of the
6 Statement of Issues is attached as exhibit A, and is incorporated herein by reference.

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

9 6. A Notice of Hearing was served by mail at Respondent's address on the application
10 and it informed him that an administrative hearing in this matter was scheduled for March 4,
11 2013. Respondent failed to appear at that hearing.

12 7. Business and Professions Code section 118 states, in pertinent part:

13 (a) The withdrawal of an application for a license after it has been filed with a
14 board in the department shall not, unless the board has consented in writing to such
15 withdrawal, deprive the board of its authority to institute or continue a proceeding
16 against the applicant for the denial of the license upon any ground provided by law or
17 to enter an order denying the license upon any such ground.

18 8. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 9. Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 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 based upon the
allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to
issuance of a license.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Angel Lopez has subjected his
3 application for Pharmacy Technician Registration to denial.

4 2. Service of Statement of Issues No. 4164 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. Violation of Business and Professions Code section 480 for a May 2011
10 conviction for violating Vehicle Code section 23152(b) (driving while having more than .08%
11 blood alcohol content) and a May 2007 conviction for violating the same vehicle code section and
12 section 23152(a) (driving under the influence);

13 b. Violation of Business and Professions Code sections 4300(c) and 4301(h) for
14 use of alcohol beverages in a dangerous or injurious manner for twice driving under the influence;

15 c. Violation of Business and Professions Code section 480 (c) for falsely failing to
16 disclose these convictions on his application; and

17 d. Violation of Business and Professions Code section 4300 (c) and 4301 (k) for
18 having multiple misdemeanor convictions involving the consumption of alcoholic beverages.

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ORDER

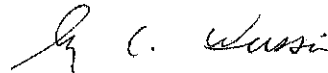
IT IS SO ORDERED that the application of Respondent Angel Lopez is hereby denied.

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 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 October 10, 2013.

It is so ORDERED ON September 10, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

DOJ docket number:LA2011601406
51321330.DOC

Attachment:

Exhibit A: Statement of Issues No.4164; Proof of Service

Exhibit B: Notice of Hearing; Proof of Service

Exhibit A

Statement of Issues No. 4164; Proof of Service

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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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

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

Case No. 4164

12 **ANGEL LOPEZ**
13 27039 Cypress Street
14 Highland, CA 92346

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 11, 2010, the Board of Pharmacy (Board) received an
24 application for an Applicant for Pharmacy Technician Registration from Angel Lopez
25 (Respondent). On or about August 7, 2010, Angel Lopez certified under penalty of perjury to the
26 truthfulness of all statements, answers, and representations in the application. The Board denied
27 the application on July 12, 2011.

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1 JURISDICTION

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.

5 STATUTORY PROVISIONS

6 4. Section 480 in pertinent part authorizes the Board to deny applications for licenses or
7 registrations if the applicant has been convicted of substantially related crimes or makes false
8 statements of fact on an application:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this
12 section means a plea or verdict of guilty or a conviction following a plea of nolo
13 contendere. Any action that a board is permitted to take following the establishment
14 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.

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

18 (B) The board may deny a license pursuant to this subdivision only if
19 the crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

20 ...
21 (c) A board may deny a license regulated by this code on the ground that
22 the applicant knowingly made a false statement of fact required to be revealed in the
application for the license."

23 5. Section 4300 subdivision (c) authorizes the Board to refuse a license or registration to
24 any applicant who is guilty of unprofessional conduct:

25 "(c) The board may refuse a license to any applicant guilty of
26 unprofessional conduct. The board may, in its sole discretion, issue a probationary
27 license to any applicant for a license who is guilty of unprofessional conduct and who
28 has met all other requirements for licensure. The board may issue the license subject
to any terms or conditions not contrary to public policy, including, but not limited to,
the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

6. Section 4301 lists examples of unprofessional conduct:

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

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

(k) The 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.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1770 in pertinent part defines when a crime or act is substantially related to a license or registration:

"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."

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Convictions of Substantially-Related Crimes)

3 8. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
4 and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent was convicted of crimes substantially related to the qualifications, functions, or
6 duties of a pharmacy technician, as follows:

7 a. On or about May 09, 2011, after pleading *nolo contendere*, Respondent was
8 convicted of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08%
9 and more, by weight, of alcohol in his blood], in the criminal proceeding entitled *People v. Angel*
10 *Lopez* (Super. Ct. San Bernardino County, 2011, No. TVA801455). The court sentenced
11 Respondent to 45 days in jail, placed him on probation for a period of 36 months, and fined him.

12 b. The circumstances surrounding 2011 conviction are that on or about June 22, 2008,
13 the San Bernardino Sheriff's Department stopped Respondent for speeding at 100 mph on the 210
14 freeway. He admitted to drinking and a preliminary field screening showed his blood alcohol
15 content was .243% and .255%.

16 c. On or about May 30, 2007, after pleading guilty Respondent was convicted of two
17 misdemeanor counts for violating Vehicle Code section 23152, subdivision (a) [driving under the
18 influence of drugs and/or alcohol] and Vehicle Code section 23152, subdivision (b) [driving
19 while having 0.08% and more, by weight, of alcohol in his blood], in the criminal proceeding
20 entitled *People v. Angel Lopez* (Super. Ct. Riverside County, 2007, No. RIM498329). The court
21 sentenced Respondent to a total of 12 days in jail, placed him on probation for a period of 36
22 months, and fined him.

23 d. The circumstances surrounding the conviction are that on or about April 4, 2007,
24 officers of the California Highway Patrol Riverside Department saw Respondent sitting alongside
25 the road in a parked car with the door open and several empty beer cans on the ground in front of
26 him. He appeared drunk. They warned him not to drive drunk and to have a woman who was
27 with him drive him home. Despite their admonition, later that same day in the same area they
28 saw him driving his car and stopped him. He was still drunk. He failed field sobriety tests and

1 two breathalyzer tests showed he had a blood alcohol content of .147% and .140%.

2 e. On or about April 12, 2006, after pleading guilty, Respondent was convicted of
3 misdemeanor count of violating Penal Code section 647, subdivision (f) [disorderly conduct:
4 Intoxication of drugs and/or alcohol], in the criminal proceeding entitled *The People of the State*
5 *of California v. Angel Lopez* (Super. Ct. Santa Ana County, 2005, No. 06CM01931). The court
6 ordered Respondent to pay a fine.

7 f. The circumstances surrounding the conviction are that on or about November 25,
8 2005, Respondent was found drunk in his parked car with the keys in his ignition. Two
9 breathalyzer tests showed he had a blood alcohol content of .100% and .101%.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Dangerous Self-Administration of Alcoholic Beverages)**

12 9. Respondent's application is subject to denial under sections 4300 subdivision (c) and
13 4301 subdivision (h) on the grounds of unprofessional conduct because on or about June 22, 2008
14 and April 02, 2007 Respondent drank substantial amounts of alcohol and drove while highly
15 intoxicated, making him a danger to himself and others. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as
17 though set forth fully.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Knowingly Made a False Statement of Fact)**

20 10. Respondent's application is subject to denial under section 480, subdivision (c), in
21 that on or about August 7, 2010, Respondent knowingly made a false statement of fact by failing
22 to disclose any convictions on his application for licensure. Complainant refers to, and by this
23 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as
24 though set forth fully.

25 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

26 **(Multiple Convictions Involving the Consumption of Alcoholic Beverages)**

27 11. Respondent's application is subject to denial under Code sections 4300 subdivision
28 (c) and 4301 subdivision (k) because he has three misdemeanor convictions involving the use,

1 consumption, or self-administration of alcoholic beverages. Complainant refers to, and by this
2 reference incorporates, the allegations set forth above in paragraph 8 and its subparagraphs as
3 though set forth fully.

4 PRAYER

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

- 7 1. Denying the application of Angel Lopez for Registration as a Pharmacy Technician;
8 and
9 2. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 6/1/12 Virginia Herold

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

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