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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:

**MIKE BRYAN MEDINA**  
**11810 Corrigan Ave.**  
**Downey, CA 90241**  
**Applicant for Pharmacy Technician**  
**Registration**

Respondent.

Case No. 4381

OAH No. 2013031062

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about January 17, 2013, 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. 4381 against Mike Bryan Medina (Respondent) before the Board of Pharmacy.
2. On or about May 20, 2011, Respondent filed an application dated May 18, 2011, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.
3. On or about May 17, 2012, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about July 19, 2012, Respondent appealed the Board's denial of his application and requested a hearing.

1           4.    On or about February 6, 2013, an employee of the Department of Justice, served by  
2 Certified and First Class Mail a copy of the Statement of Issues No. 4381, Statement to  
3 Respondent, Request for Discovery, and Relevant Government Code Sections to Respondent's  
4 address on his request for appeal of denial, which was and is 11810 Corrigan Ave., Downey, CA  
5 90241. A copy of the Statement of Issues is attached as exhibit A, and is incorporated herein by  
6 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.    On or about July 19, 2012, Respondent appealed the denial of his application and  
10 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's  
11 address on the request for appeal of denial and it informed him that an administrative hearing in  
12 this matter was scheduled for September 13, 2013. Respondent failed to appear at that hearing.  
13

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

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

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

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

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

27           (a) If the respondent either fails to file a notice of defense or to appear at the  
28 hearing, the agency may take action based upon the respondent's express admissions  
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 based upon the

1 allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to  
2 issuance of a license.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Mike Bryan Medina has  
5 subjected his application for a Pharmacy Technician Registration to denial.

6 2. Service of Statement of Issues No. 4381 and related documents was proper and in  
7 accordance with the law.

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

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

11 a. Respondent's application is subject to denial under Business and Professions  
12 Code section 480, subdivision (a)(1), in conjunction with California Code of Regulations, title 16,  
13 section 1770, for conviction of a substantially related crime.

14 b. Respondent's application is subject to denial under Business and Professions  
15 Code sections 4060, 4300, 4301, subdivision (j), in conjunction with California Code of  
16 Regulations, title 16, section 1770, on the grounds of unprofessional conduct for violating Health  
17 and Safety Code sections 11056, subdivision (e), and 11170, for possession of a controlled  
18 substance without a valid prescription.

19 c. Respondent's application is subject to denial under Business and Professions  
20 Code sections 480, subdivision (a)(2), and 4301, subdivision (f), for acts involving dishonesty,  
21 fraud, or deceit.

22 d. Respondent's application is subject to denial under Business and Professions  
23 Code sections 480, subdivision (a)(3)(A) and (a)(3)(B) and 4301, subdivision (p) for acts  
24 warranting denial of licensure.

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ORDER

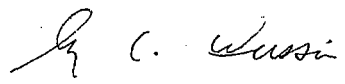
IT IS SO ORDERED that the application of Respondent Mike Bryan Medina is hereby denied.

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 November 22, 2013.

It is so ORDERED ON October 23, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
STAN C. WEISSER  
Board President

DOJ docket number: LA2012507546  
51366568.DOC

Attachment:  
Exhibit A: Statement of Issues No. 4381

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**Exhibit A**  
**Statement of Issues No. 4381**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-0962  
6 Facsimile: (213) 897-2804

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  
Against:

Case No. 4381

12 **MIKE BRYAN MEDINA**

**STATEMENT OF ISSUES**

13  
14 Applicant for Pharmacy Technician  
15 Registration

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 20, 2011, the Board received an application for registration as a  
24 Pharmacy Technician from Mike Bryan Medina (Respondent). On or about May 18, 2011,  
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on May 17, 2012.

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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 states, in pertinent part:

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

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
11 board is permitted to take following the establishment of a conviction may be taken when the  
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
13 an order granting probation is made suspending the imposition of sentence, irrespective of a  
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

22 . . . .

23 5. Section 490 states, in pertinent part:

24 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
25 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
26 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
27 or profession for which the license was issued.

28 ///

1           "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
2 discipline a licensee for conviction of a crime that is independent of the authority granted under  
3 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
4 of the business or profession for which the licensee's license was issued.

5           "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
6 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
7 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
8 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
9 made suspending the imposition of sentence, irrespective of a subsequent order under the  
10 provisions of Section 1203.4 of the Penal Code."

11           6. Section 4060 states:

12           "No person shall possess any controlled substance, except that furnished to a person upon  
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
22 labeled with the name and address of the supplier or producer.

23           "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs  
25 and devices."

26           7. Section 4300 states, in pertinent part:

27           "That every license issued by the Boards is subject to discipline, including suspension or  
28 revocation."



1           8.     Section 4301 states, in pertinent part:

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

5           .....

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

9           .....

10          "(j)   The violation of any of the statutes of this state, or any other state, or of the United  
11     States regulating controlled substances and dangerous drugs.

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

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"(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

9. California Code of Regulations, title, 21, section 1308.13, states:

....

"(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantizes as set forth below: . . ."

10. 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."

DRUG STATUTES

11. Health and Safety Code section 11056, subdivision (e), states, in pertinent part:

"Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities. . . ."

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1 court proceeding entitled *The People of the State of California v. Mike Bryan Medina* (Super. Ct.  
2 Los Angeles County, 2010, No. KA091954). The court dismissed the charges. A review of  
3 Respondent's CURES report from January 01, 2009 to May 01, 2012, while employed as a  
4 Pharmacy Technician at Better Value Pharmacy, revealed that Respondent was dishonest and did  
5 not have a prescription for the hydrocodone/apap 10/325 mg tablets that were discovered in his  
6 possession.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Involving Dishonesty, Fraud, or Deceit)**

9 15. Respondent's application is subject to denial under sections 480, subdivision (a)(2),  
10 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent  
11 committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or  
12 substantially injure another. Complainant refers to, and by this reference incorporates, the  
13 allegations set forth above in paragraph 14, subparagraph (a), as though set forth fully.

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 **(Acts Warranting Denial of Licensure)**

16 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
17 and (a)(3)(B) and 4301, subdivision (p), in that Respondent committed acts which if done by a  
18 licentiate would be grounds for suspension or revocation of his license, as follows:

19 a. Respondent's was convicted of a crime substantially related to the qualifications,  
20 functions, or duties of a pharmacy technician which to a substantial degree evidence his present  
21 or potential unfitness to perform the functions authorized by his license in a manner consistent  
22 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in  
23 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
24 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph  
25 (a), as though set forth fully.

26 b. On or about July 02, 2010, Respondent was in possession of a controlled substance  
27 without a valid prescription, in violation of sections 4060, 4300, and 4301, subdivision (j), in  
28 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 14, subparagraph  
2 (a), as though set forth fully.

3 d. Respondent committed dishonest acts, fraudulent, or deceitful acts, with the intent to  
4 substantially benefit himself, or substantially injure another, in violation of section 480,  
5 subdivision (a)(2). Complainant refers to, and by this reference incorporates, the allegations set  
6 forth above in paragraph 14, subparagraph (a), as though set forth fully.

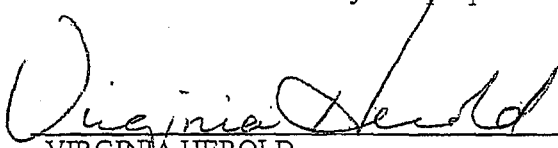
7 PRAYER

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

10 1. Denying the application of Mike Bryan Medina for registration as a Pharmacy  
11 Technician; and

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

13  
14 DATED: 1/17/13

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

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