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

In the Matter of the Statement of Issues Against:

Case No. 4418

## **TERIN THOMPSON KANDARIAN**

Pharmacy Technician Applicant

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 November 21, 2013.

It is so ORDERED on October 22, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN 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:

Case No. 4418

TERIN THOMPSON KANDARIAN,

OAH No. 2013050372

Respondent.

## **PROPOSED DECISION**

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on July 24, 2013, in Oakland, California.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, was represented by Susana A. Gonzales, Deputy, Attorney General.

Respondent Terin Thompson Kandarian was present and represented herself.

This matter was submitted for decision on July 24, 2013.

#### FACTUAL FINDINGS

1. Complainant Virginia Herold made this statement of issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (board).

2. On January 13, 2012, respondent submitted a pharmacy technician application to the board. The board denied her application on July 20, 2012, and respondent appealed.

3. On March 7, 2008, respondent was convicted in the Superior Court of the State of California, County of San Mateo, upon her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of .08 percent or higher), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years, on terms and conditions which included 96 days in jail, to be served through the Sheriff's work program, attending a nine-month first offender program, and fines and fees.

The facts and circumstances of the offense are that on December 29, 2007, respondent drove her vehicle after consuming alcohol. Respondent's blood alcohol content was tested at .212 percent and .202 percent.

On July 23, 2013, respondent filed a petition for dismissal of the conviction pursuant to Penal Code section 1203.4. The petition was pending at the time of the hearing.

4. Respondent expressed great remorse for her conviction. Respondent stated that she was "young and immature" at the time of the offense and has "grown and learned" since then. Respondent complied with all terms and conditions of probation, including successful completion of the court-ordered first offender program. The offense occurred shortly after respondent's brother had been diagnosed with epilepsy. She reacted poorly to the bad news by going out drinking. She understands that drinking was not the right way to handle a stressful situation. Facing the consequences of her conviction was "hard." Respondent has attended counseling with her family to help cope with her brother's illness. She has learned to be more open with her family about her feelings. Respondent does not drink anymore. She does not want to put people at risk and she does not want to go backwards after working hard to move forward after her DUI.

5. Respondent has been employed as a pharmacy associate at CVS Pharmacy (formerly Long's Drugs) for almost 14 years, since she was a teenager. She prides herself in providing excellent service to the customers. She has developed relationships with her customers over the years. She understands the board's concerns about her conviction, and stated that she would never do anything wrong at the workplace. Respondent wishes to continue working at CVS, which is now requiring all pharmacy employees to be licensed.

6. Respondent is 29 years old. She plans on attending nursing school in the near future.

7. Anne Hunt, a supervising investigator for the board, testified that respondent's conviction was of concern because it shows a disregard for the law and a lack of good judgment. Hunt stated that the high blood alcohol content involved in the offense raises concerns about respondent's potential for addiction. Hunt noted that pharmacy technicians have access to controlled substances.

8. Robert Siskin testified at the hearing. Siskin has been a licensed pharmacist for 37 years. He has worked with respondent for five years. He has found respondent to be professional, courteous, and diligent. She is a dedicated employee and provides excellent service to the pharmacy customers. Siskin stated that respondent has an "exemplary work ethic" and is more knowledgeable than may of the licensed pharmacy technicians working at the pharmacy.

9. In a letter dated June 10, 2013, Phillip Hopper, a CVS pharmacy customer, writes that respondent "stepped up time after time to wade into the middle of arbitrating

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disagreements, policies, confusion, and getting things done and what I needed when I needed it."

10. In an e-mail message dated May 9, 2013, addressed to CVS, customer Mary Mastrobattista writes that respondent is "pleasant, competent, and knowledgeable." Respondent noticed that a prescription was incorrect and called the doctor to correct it before Mastrobattista arrived at the pharmacy to pick it up.

#### LEGAL CONCLUSIONS

1. Business and Professions Code sections 480, subdivision (a)(3), and 4301, subdivision (h), provide that the board may deny an application for a pharmacy technician license if the applicant has engaged in unprofessional conduct by using alcohol in a dangerous and injurious manner. Cause exists to deny respondent's application in light of the matters set forth in Finding 3.

2. Business and Professions Code sections 480, subdivision (a)(1) and 4301, subdivision (l), provide that the board may deny an application for a pharmacy technician license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. A crime is substantially related to the qualifications, functions or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1770.) Respondent's conviction for driving under the influence of alcohol with a blood alcohol content in excess of .08 percent is substantially related to the qualifications, functions or duties of a pharmacy technician. Therefore, cause exists to deny respondent's application in light of the matters set forth in Finding 3.

3. The board has set forth criteria for evaluating the rehabilitation of an applicant for a licensure. (Cal. Code Regs., tit. 16, § 1769.) These criteria include the nature and severity of the offense, the time that has elapsed, whether the applicant has complied with the terms of probations, and evidence of rehabilitation. Respondent has presented sufficient evidence of rehabilitation to warrant granting a probationary pharmacy technician registration. The underlying conduct occurred more than five years ago. Respondent complied with probation, which has been completed. The incident occurred when respondent was fairly young and was coping with the news that her brother suffered from epilepsy. Respondent has learned from her mistakes. She is better able to handle stressful situations and she refrains from using alcohol. Respondent has worked in a pharmacy for almost 14 years, where she is a valued and trusted employee. The evidence established that respondent is genuinely committed to leading a law-abiding and productive life and is extremely unlikely to engage in further criminal activity or unprofessional conduct in the future. Accordingly, assuming that respondent has otherwise met all other requirements for licensure, it would not be against the public interest to issue respondent a pharmacy technician registration license on a probationary basis.

#### ORDER

The application of respondent Terin Thompson Kandarian for registration as a pharmacy technician is denied. A probationary registration, however, shall be issued to respondent for a period of (3) three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

a. an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.

b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.c. a conviction of any crime.

d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. <u>Report to the Board</u>

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. <u>Interview with the Board</u>

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

#### 4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

## 5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4418 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4418 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4418 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4418 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any fulltime, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

6. <u>Probation Monitoring Costs</u>

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

# 7. <u>Status of License</u>

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## 8. <u>License Surrender While on Probation/Suspension</u>

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

 Notification of a Change in Name, Residence Address, Mailing Address or <u>Employment</u> Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for
 leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

#### 10. <u>Tolling of Probation</u>

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a specific number of hours per calendar month to be determined by the board or its designee. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician in California for the specific minimum number of hours per calendar month determined by the board, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working as a pharmacy technician, as defined in Business and Professions Code section 4115 for at least the minimum hours determined by the board. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions Code section 4115 for at least the minimum number of hours determined by the board.

#### 11. <u>Violation of Probation</u>

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

12. <u>Completion of Probation</u>

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: 8/14/13

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KAREN REICHMANN Administrative Law Judge Office of Administrative Hearings

1 2 3 3 4 5 5 7	KAMALA D. HARRIS Attorney General of California DIANN SOKOLOFF Supervising Deputy Attorney General SUSANA A. GONZALES Deputy Attorney General State Bar No. 253027 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2221 Facsimile: (510) 622-2270 Attorneys for Complainant		
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	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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	In the Matter of the Statement of Issues Against:	Case No. 4418	
	TERIN THOMPSON KANDARIAN	STATEMENT OF ISSUES	
	Pharmacy Technician Applicant		
	Respondent.		
	Complainant alleges:		
	PAR	TIES	
	1. Virginia Herold (Complainant) bring	s 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 January 13, 2012, the Board of Pharmacy, Department of Consumer		
	Affairs received an application for a Pharmacy Technician from Terin Thompson Kandarian		
	(Respondent). On or about January 9, 2012, Terin Thompson Kandarian certified under penalty		
	of perjury to the truthfulness of all statements, answers, and representations in the application.		
	The Board denied the application on July 20, 2012.		
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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	4. Section 118 of the Code states, in pertinent part:	
6	"(a) The withdrawal of an application for a license after it has been filed with a board in	
7	the department shall not, unless the board has consented in writing to such withdrawal, deprive	
8	the board of its authority to institute or continue a proceeding against the applicant for the denial	
9	of the license upon any ground provided by law or to enter an order denying the license upon any	
10	such ground."	
11	STATUTORY AND REGULATORY PROVISIONS	
12	5. Section 480 of the Code states:	
13	"(a) A board may deny a license regulated by this code on the grounds that the applicant	
14	has one of the following:	
15	"(1) Been convicted of a crime. A conviction within the meaning of this section means a	
16	plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a	
17	board is permitted to take following the establishment of a conviction may be taken when the	
18	time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when	
19	an order granting probation is made suspending the imposition of sentence, irrespective of a	
20	subsequent order under the provisions of Section 1203.4 of the Penal Code.	
21	"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially	
22	benefit himself or herself or another, or substantially injure another.	
23	"(3) (A) Done any act that if done by a licentiate of the business or profession in question,	
24	would be grounds for suspension or revocation of license.	
25	"(B) The board may deny a license pursuant to this subdivision only if the crime or act is	
26	substantially related to the qualifications, functions, or duties of the business or profession for	
27	which application is made."	
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STATEMENT OF ISSUES

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1	6. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is	
2	defined to include, but not be limited to, any of the following:	
3	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous	
4	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to	
5	oneself, to a person holding a license under this chapter, or to any other person or to the public, or	
6	to the extent that the use impairs the ability of the person to conduct with safety to the public the	
7	practice authorized by the license.	
8	· · ·	
9	"(1) The conviction of a crime substantially related to the qualifications, functions, and	
10	duties of a licensee under this chapter."	
11	7. California Code of Regulations, title 16, section 1770, states:	
12	"For the purpose of denial, suspension, or revocation of a personal or facility license	
13	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a	
14	crime or act shall be considered substantially related to the qualifications, functions or duties of a	
15	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a	
16	licensee or registrant to perform the functions authorized by his license or registration in a manner	
17	consistent with the public health, safety, or welfare."	
18	FIRST CAUSE FOR DENIAL OF APPLICATION	
19	(Unprofessional Conduct – Dangerous or Injurious Use of Alcohol) (Bus. & Prof. Code §§ 480, subd. (a)(3), 4301, subd. (h))	
20	8. Respondent's application is subject to denial under Code section 480, subdivision	
21	(a)(3), by reference to Code section 4301, subdivision (h), in that Respondent engaged in	
22	unprofessional conduct by using alcohol in a dangerous and injurious manner. The circumstances	
23	are as follows:	
24	9. On or about December 29, 2007, at approximately 1:24 a.m., a Burlingame Police	
25	Officer (Officer 1), observed Respondent commit several traffic violations, including swerving in	
26	and out of lanes and nearly colliding with a parked vehicle. Officer 1 called Officer 2 for	
27	assistance, and Officer 1 initiated a traffic stop of Respondent's vehicle.	
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STATEMENT OF ISSUES

10. Officer 2 arrived at the scene and approached the driver's side of Respondent's 1 vehicle. Officer 2 could smell the odor of alcohol emitting from Respondent's vehicle and also 2 noticed that Respondent had bloodshot, watery eyes and drooping eyelids. Officer 2 asked 3 Respondent to exit her vehicle and complete a series of field sobriety tests (FST's). Respondent 4 stumbled as she exited her vehicle and Officer 2 had to assist her into a standing position. 5 Respondent performed poorly on the FST's. Officer 2 administered the Preliminary Alcohol 6 Screening (PAS) device to Respondent, which showed that she had a blood alcohol level of 7 0.212% at 1:43 a.m., and 0.202% at 1:45 a.m. Due to the officers' observations of Respondent's 8 9 driving, her symptoms of intoxication, and her failure to satisfactorily complete the FST's, Officer 2 arrested Respondent for violating Vehicle Code section 23152, subdivision (a) (driving 10 under the influence). Respondent admitted that she had been drinking, but denied feeling the 11 effects of the drinks. Once she was transported to the Burlingame Police Department, 12 Respondent elected to take the breath test, but once she began vomiting she agreed to take the 13 blood test instead. 14 SECOND CAUSE FOR DENIAL OF APPLICATION 15 (Conviction of Substantially Related Crime) 16 (Bus. & Prof. Code §§ 480, subd. (a)(1), 4301, subd. (l); Cal. Code Regs., tit. 16, § 1770) 17 Complainant realleges the allegations contained in paragraphs 8 through 10 above, 11. 18 and incorporates them by reference as if fully set forth. 19 12. Respondent's application is subject to denial under Code section 480, subdivision 20(a)(1), by reference to Code section 4301, subdivision (1), and as defined by California Code of 21 Regulations, title 16, section 1770, in that she was convicted of a crime substantially related to the 22 qualifications, functions, and duties of a licensee. The circumstances are that on or about March 23 7, 2008, in a criminal matter entitled The People of the State of California v. Kandarian, Terin 24 Thompson, in the San Mateo County Superior Court, Case No. NM373008A, Respondent was 25 convicted by plea of nolo contendre to violating Vehicle Code section 23152, subdivision (b) 26 (driving under the influence with a blood alcohol level of .08% or higher), a misdemeanor, with a 27 special enhancement of Vehicle Code section 23578 (driving with a blood alcohol level of .15% 28

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STATEMENT OF ISSUES

1	or higher). Respondent was placed on court probation for 3 years and ordered to complete a 9		
2	month First Offender Program, not drive without a valid license and insurance, not drive with any		
3	alcohol in her blood, submit to an alcohol test whenever directed by a probation officer or peace		
4	officer, and pay various fees and fines.		
5	PRAYER		
6	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this		
7	Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:		
8	1. Denying the application of Terin Thompson Kandarian for a Pharmacy Technician;		
9	and		
10	2. Taking such other and further action as deemed necessary and proper.		
11	DATED: 3/26/13 ( haina Hedd		
12	VIRGINIA HEROLD Executive Officer		
13	Board of Pharmacy Department of Consumer Affairs		
14	State of California Complainant		
15	Comptainant		
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