

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Statement of Issues
Against:

**JEFFREY WARREN YERKES
12828 Fiesta Drive
Poway, CA 92064**

Pharmacy Technician Registration

Respondent.

Case No. 4677

OAH No. 2013100835

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about August 13, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Statement of Issues No. 4677 against Jeffrey Warren Yerkes (Respondent) before the Board.

2. On or about July 23, 2012, Respondent filed an application dated July 6, 2012, with the Board to obtain a Pharmacy Technician Registration.

3. On or about January 23, 2013, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about March 22, 2013, Respondent appealed the Board's denial of his application and requested a hearing.

4. On or about August 23, 2013, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 4677, Statement to

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
2 11507.6, and 11507.7 to Respondent's address on request for hearing, which was and is 12828
3 Fiesta Drive, Poway, CA 92064. A copy of the Statement of Issues is attached as Exhibit A, and
4 is incorporated herein by reference.

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

7 6. On or about March 22, 2013, Respondent appealed the denial of his application and
8 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
9 address on the application and it informed him that an administrative hearing in this matter was
10 scheduled for October 16, 2014. Respondent failed to appear at that hearing.

11 7. Government Code section 11506 states, in pertinent part:

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

17 8. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent; and where the burden of proof is on the respondent to establish that the
22 respondent is entitled to the agency action sought, the agency may act without taking
23 evidence.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing based upon the
26 allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to
27 issuance of a license.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jeffrey Warren Yerkes has
subjected his application for a Pharmacy Technician Registration to denial.

2. Service of Statement of Issues No. 4677 and related documents was proper and in
accordance with the law.

EXHIBIT A
Statement of Issues No. 4677

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Statement of Issues
Against:

Case No. 4677

13 **JEFFREY WARREN YERKES**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant,**

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 2. On or about July 23, 2012, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Jeffrey Warren Yerkes
24 (Respondent). On or about July 6, 2012, Jeffrey Warren Yerkes certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on January 23, 2013.

27 ///

28 ///

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 (Code) unless otherwise indicated.

5 4. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a
6 license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion,
7 issue a probationary license to any applicant for a license who is guilty of unprofessional conduct
8 and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

11 (a) Notwithstanding any other provisions of this code, the provisions of this
12 division shall govern the denial of licenses on the grounds of:

13 (1) Knowingly making a false statement of material fact, or knowingly
14 omitting to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the
17 intent to substantially benefit himself or another, or substantially injure another.

18 (4) Commission of any act which, if done by a licentiate of the business or
19 profession in question, would be grounds for suspension or revocation of license.

20 (b) Notwithstanding any other provisions of this code, the provisions of this
21 division shall govern the suspension and revocation of licenses on grounds specified
22 in paragraphs (1) and (2) of subdivision (a).

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a
24 lack of good moral character or any similar ground relating to an applicant's
25 character, reputation, personality, or habits.

26 6. Section 480 of the Code states:

27 (a) A board may deny a license regulated by this code on the grounds that the
28 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.

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

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

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

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

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

18 7. Section 482 of the Code states:

19 Each board under the provisions of this code shall develop criteria to evaluate
20 the rehabilitation of a person when:

21 (a) Considering the denial of a license by the board under Section 480; or

22 (b) Considering suspension or revocation of a license under Section 490.

23 Each board shall take into account all competent evidence of rehabilitation
24 furnished by the applicant or licensee.

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

26 ///
27 ///
28 ///

1 9. Section 4301 of the Code states:

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

6

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

26

27 REGULATORY PROVISIONS

28 10. California Code of Regulations, title 16, section 1769 states:

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

(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. . . .

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

2 For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
4 Professions Code, a crime or act shall be considered substantially related to the
5 qualifications, functions or duties of a licensee or registrant if to a substantial degree
6 it evidences present or potential unfitness of a licensee or registrant to perform the
7 functions authorized by his license or registration in a manner consistent with the
8 public health, safety, or welfare.

9 **CAUSE FOR DENIAL OF APPLICATION**

10 **(March 18, 2003 Criminal Convictions for Statutory Rape on December 14, 2002)**

11 12. Respondent's application for licensure is subject to denial under section 480,
12 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is
13 substantially related to the qualifications, duties, and functions of a registered pharmacy
14 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code
15 for a registered pharmacy technician. The circumstances are as follows:

16 a. On or about March 18, 2003, in a criminal proceeding entitled *People of the*
17 *State of California vs. Jeffrey W. Yerkes*, in San Diego County Superior Court, case number
18 SCD172688, after the Information was amended by interlineation, Respondent pled guilty to two
19 counts of violating Penal Code section 261.5, subdivision (c), unlawful intercourse with a minor,
20 three or more years younger, a felony.

21 b. As a result of the convictions, on or about May 9, 2003, the court sentenced
22 Respondent to serve 90 days in jail, with credit for three days, and granted three years formal
23 probation. Respondent was ordered to pay fees and fines, and comply with probation terms. On
24 or about August 17, 2011, the court granted Respondent's Petition for Dismissal under Penal
25 Code section 1203.4. Respondent's guilty plea was withdrawn, a plea of not guilty was entered,
26 and the charges were dismissed.

27 c. The facts that led to the convictions, which are taken from Respondent's plea
28 agreement, are that on or about December 14, 2002, Respondent had unlawful sexual intercourse
with two underage girls at a time when he was nineteen years old, when neither of the girls was
Respondent's wife.

///

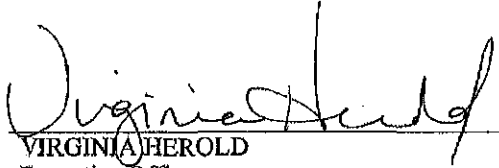
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Denying the application of Jeffrey Warren Yerkes for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/13



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

SD2013705213