

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

In the Matter of the Statement of
Issues Against:

ABEL WOLDEGABRIEL

Pharmacy Technician License Applicant,

Respondent.

Case No. 5421

OAH No. 2016051210

DECISION AFTER REJECTION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 22, 2016, in Oakland, California. Complainant Virginia Herold, Executive Officer of the California State Board of Pharmacy (board), was represented by Geoffrey S. Allen, Deputy Attorney General. Respondent Abel Woldegabriel was present and represented himself. This matter was submitted for decision on August 22, 2016. The ALJ prepared a Proposed Decision on August 30, 2016.

On November 2, 2016, pursuant to section 11517 of the Government Code, the board issued an Order rejecting the Proposed Decision of the ALJ. On November 30, 2016, the board issued an Order reflecting that the transcript had been received and the deadline for submission of written argument was set for December 30, 2016. Complainant timely submitted written argument; no argument was received from respondent.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues this decision.

FACTUAL FINDINGS

1. Complainant Virginia Herold issued the statement of issues in this matter in her official capacity as the Executive Officer of the board.

2. On June 23, 2014, respondent submitted a pharmacy technician license application to the board. The board denied the application on February 13, 2015, and respondent appealed.

3. On August 23, 2010, respondent was convicted in the Superior Court of the State of California, County of Alameda, upon a plea of no contest, 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 serving five days in jail, to be served through the Sheriff's work program, attending a six-month DUI program, and paying a \$1,810 fine.

The facts and circumstances of the offense are that on June 4, 2010, respondent drove after consuming alcohol. Respondent was involved in a solo vehicle collision. Respondent's blood alcohol content was tested at .24 percent and .19 percent. The arrest report reflects that the incident occurred late at night.

4. On April 18, 2012, respondent was convicted in the Superior Court of the State of California, County of Alameda, upon a plea of no contest, 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 serving twenty days in jail, to be served through the Sheriff's work program, attending an 18-month DUI program, and paying a \$1,833 fine.

The facts and circumstances of the offense are that on March 3, 2012, respondent drove after consuming alcohol. Respondent was pulled over after he was observed driving erratically. Respondent's blood alcohol content was tested at .21 percent. The arrest report reflects that the incident occurred late at night.

5. Respondent explained that he was 21 at the time of the first offense and 23 at the time of the second offense. He states he has "grown up" since that time and has learned from his mistakes. Respondent completed the two court-ordered DUI programs as part of his criminal probation. He stopped drinking after the second offense because he decided it "wasn't worth it" and he did not want to have any more trouble. He added, "that part of me doesn't exist anymore." Respondent has not engaged in further alcohol treatment because he does not believe he needs it. His employer has resources available for employees who need help with alcohol, but respondent has not felt a need to seek this help.

6. Respondent is 27 years old. He testified that works as a security guard for Amazon Security. He has held this position for two and one-half years. He holds a security guard registration.

7. Respondent is in his final semester at Chabot College. He plans to attend San Francisco State University beginning in January and plans on earning a bachelor's degree in business administration.

8. Respondent completed a pharmacy technician program at Unitek College in 2009, which included internships. He enjoyed the program and did well in it. Respondent would like to work in a hospital pharmacy if his application is granted.

9. Respondent testified that he is active in his church. His priorities in life are "church, school, and work."

LEGAL CONCLUSIONS

1. The board is guided by principles and statutes that mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Bus. & Prof. Code, §§ 4001.1 and 4313.)

2. As an applicant for licensure, respondent bears the burden of proof to show that licensure is warranted, including establishing rehabilitation to overcome the particular matters articulated as causes for denial. (Gov. Code, § 11504; Bus. & Prof. Code, §4202(b).)

3. Business and Professions Code (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 and 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 his license or registration in a manner consistent with the public health, safety, or welfare.” (Cal. Code Regs., tit. 16, § 1770.) Respondent’s two convictions for driving under the influence of alcohol with a blood alcohol content in excess of .08 percent are substantially related to the qualifications, functions or duties of a pharmacy technician. Cause exists to deny respondent’s application in light of the matters set forth in Factual Findings 3 and 4.

4. 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 Factual Findings 3 and 4.

5. California Code of Regulations, title 16, sections 1769, subdivision (b), and 1770, incorporating the board’s Disciplinary Guidelines, provide criteria the board uses when considering an applicant’s rehabilitation, eligibility, and fitness for licensure, including when a license may be denied under Section 480 of the Code.

6. In evaluating the evidence in this proceeding, all items of mitigation and rehabilitation have been considered. The criteria considered include:

a. Actual or potential harm to the public. The circumstances surrounding respondent’s 2010 driving under the influence conviction included a single vehicle accident. Through his conduct of driving under the influence, respondent could have injured or killed someone, including himself. Given that respondent had particularly high levels of alcohol, in both cases his blood alcohol content was .20 percent or greater – over two and a half times the legal limit.

b. Actual or potential harm to any consumer. If respondent, while working as a pharmacy technician while under the influence, or after a night of drinking, he could injure or kill a consumer if he makes errors or omissions with regard to consumer prescriptions. In addition, if a technician has bad judgment or a problem with alcohol, he may be unable to refuse the type of pressure asserted by drug-seeking addicts. In a professional setting, individuals could receive access to controlled substances without

a prescription, consumers could receive the wrong medication, and injury or death could occur.

c. Prior disciplinary record, including level of compliance with disciplinary order(s)/Prior warnings or other enforcement action. There is no prior disciplinary history or enforcement history in the record.

d. Number and/or variety of current violations. Respondent's misconduct was two convictions of driving under the influence.

e. Nature and severity of the acts. Respondent was convicted twice in the six years prior to his license denial. His blood alcohol content was so high that it causes the board great concern. His decision to drive after consuming that much alcohol is even more concerning. He demonstrated a lack of ability to use a lawful substance legally and responsibly, and causes the board concern about giving him access to dangerous drugs and particularly controlled substances.

f. Aggravating evidence. That respondent engaged in this behavior twice, in a short period, with extremely high blood alcohol content on both occasions aggravates the misconduct.

g. Mitigating evidence. Respondent testified that he no longer uses alcohol after his most recent conviction.

h. Rehabilitation evidence. Respondent participated in two drug diversion programs as part of each of his criminal probation, but ceased that activity once the obligations of his criminal probation were satisfied. Other than his testimony, he did not provide other evidence of his sobriety, his character, his criminal probation compliance, or his work habits.

i. Compliance with criminal probation. Respondent testified that he complied with all of his criminal probation.

j. Total criminal record. Respondent's criminal record appears to include only the arrests and convictions forming the basis for this action.

k. Evidence of set aside or dismissal of convictions. Respondent offered no evidence that he sought to dismiss his convictions pursuant to the Penal Code.

l. Time passed since the acts or offenses. The most recent misconduct occurred in April, 2012. Respondent had only recently completed his criminal probation. Insufficient time has passed since completion of his criminal probation to use time as a significant factor of rehabilitation.

m. Whether the conduct was intentional or negligent, or demonstrated incompetence. Respondent's conduct was intentional and demonstrated bad judgment. As a pharmacy technician, with access to dangerous drugs, including highly addictive controlled substances, respondent must be able to exercise good

judgment.

n. Financial benefit to the respondent from misconduct. There was no evidence of financial benefit to respondent from his misconduct.

7. The ALJ determined that respondent was credible and sincere, and that he showed sufficient rehabilitation to warrant issuing a license under terms and conditions of probation. The Board has given significant weight to the ALJ's credibility finding,¹ however, the Board is not bound by the ALJ's determination of whether the applicant is qualified for licensure. (*In re Glass* (2014) 58 Cal.4th 500, 520–21; *In re Gossage* (2000), 23 Cal.4th 1080.) In this case, other evidence compels us to reject the conclusion that respondent has overcome the rehabilitation hurdle created by his prior misconduct. Respondent presented some rehabilitation, but did not submit sufficient rehabilitation to warrant a probationary pharmacy technician license.

8. Respondent has failed to show sufficient rehabilitation efforts to overcome the gravity and nature of his prior unprofessional conduct.

ORDER

The application of Abel Woldegabriel for a pharmacy technician license is denied.

This Decision shall become effective at 5:00 p.m. on April 6, 2017.

It is so ORDERED on March 7, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

¹ Government Code section 11425.50, subdivision (b), states, in pertinent part, "If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it." The ALJ's findings of credibility did not contain any observations of the demeanor or attitude of respondent, so the findings are not entitled to great weight.

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

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Respondent.

Case No. 5421

OAH No. 2016051210

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated November 2, 2016.

Written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd., Suite N-219, Sacramento, California, 95834 on or before December 30, 2016. **No new evidence may be submitted.**

IT IS SO ORDERED this 30th day of November 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Statement of
Issues Against:

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Respondent.

Case No. 5421

OAH No. 2016051210

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

Although the right to argue is not limited, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on November 2, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Statement of
Issues Against:

ABEL WOLDEGABRIEL,

Respondent.

Case No. 5421

OAH No. 2016051210

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 22, 2016, in Oakland, California.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, was represented by Geoffrey S. Allen, Deputy Attorney General.

Respondent Abel Woldegabriel was present and represented himself.

This matter was submitted for decision on August 22, 2016.

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 June 23, 2014, respondent submitted a pharmacy technician license application to the board. The board denied the application on February 13, 2015, and respondent appealed.

3. On August 23, 2010, respondent was convicted in the Superior Court of the State of California, County of Alameda, upon a 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 serving five days in jail, to be served through the Sheriff's work program, attending a six-month DUI program, and paying a \$1,810 fine.

The facts and circumstances of the offense are that on June 4, 2010, respondent drove after consuming alcohol. Respondent was involved in a solo vehicle collision. Respondent's blood alcohol content was tested at .24 percent and .19 percent. The arrest report reflects that the incident occurred late at night.

4. On April 18, 2012, respondent was convicted in the Superior Court of the State of California, County of Alameda, upon a plea of nolo contest, 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 serving twenty days in jail, to be served through the Sheriff's work program, attending an 18-month DUI program, and paying a \$1,833 fine.

The facts and circumstances of the offense are that on March 3, 2012, respondent drove after consuming alcohol. Respondent was pulled over after he was observed driving erratically. Respondent's blood alcohol content was tested at .21 percent. The arrest report reflects that the incident occurred late at night.

5. Respondent explained that he was 21 at the time of the first offense and 23 at the time of the second offense. He has "grown up" since that time and has learned from his mistakes. Respondent completed the two court-ordered DUI programs. He stopped drinking after the second offense because he decided it "wasn't worth it" and he did not want to have any more trouble. He added, "that part of me doesn't exist anymore." Respondent has not engaged in further alcohol treatment because he does not believe he needs it. His employer has resources available for employees who need help with alcohol, but respondent has not felt a need to seek this help.

6. Respondent is 27 years old. He works as a security guard for Amazon Security. He has held this position for two and one-half years. He holds a security guard registration.

7. Respondent is in his final semester at Chabot College. He will be attending San Francisco State University beginning in January and plans on earning a bachelor's degree in business administration.

8. Respondent completed a pharmacy technician program at Unitek College in 2009, which included internships. He enjoyed the program and did well in it. Respondent would like to work in a hospital pharmacy if his application is granted.

9. Respondent is active in his church. His priorities in life are "church, work, and school." Respondent's testimony was sincere and credible.

LEGAL CONCLUSIONS

1. 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 two convictions for driving under the influence of alcohol with a blood alcohol content in excess of .08 percent are 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 Findings 3 and 4.

2. 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 Findings 3 and 4.

3. The Board has set forth criteria for evaluating the rehabilitation of an applicant for 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 probation, and evidence of rehabilitation. Respondent committed two misdemeanor driving under the influence offenses. His blood alcohol content on both occasions was very high. This conduct created a great risk of harm to respondent and to others. The most recent offense occurred four years ago. Respondent complied with probation, which most recently included completing an 18-month driving under the influence program. Respondent testified credibly that he has matured since the time of the convictions and is focused on furthering his education and career. Respondent has presented sufficient evidence of rehabilitation to warrant granting a probationary pharmacy technician license.

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 license, on a probationary basis.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a pharmacy technician license shall be issued to respondent Abel Woldegabriel and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. 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 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; or

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.

3. Report to the Board

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.~~

4. Interview with the Board

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 or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. 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 probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5421 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty days of the effective date of this decision, and within fifteen days of respondent undertaking any new employment, respondent shall cause his 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 5421 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his 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 direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5421 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 days of the effective date of this decision, and within fifteen days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his 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 5421 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his 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 full-time, 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.

7. Probation Monitoring Costs

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.

8. Status of License

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.

9. License Surrender While on Probation/Suspension

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 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 pharmacy technician license to the board within ten 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 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.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten 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 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.

11. Tolling of Probation

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 days of cessation of work and must further notify the board in writing within ten 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 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.

12. Violation of Probation

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.

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.

13. Completion of Probation

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

DATED: August 30, 2016

DocuSigned by:
Karen E Reichmann
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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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

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

Case No. 5421

13 **ABEL WOLDEGABRIEL**

14 **Pharmacy Technician Applicant**

15 Respondent.

STATEMENT OF ISSUES

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about June 23, 2014, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Abel Woldegabriel
23 (Respondent). On or about June 19, 2014, Abel Woldegabriel certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on February 13, 2015.

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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 unless otherwise indicated.

5 4. Section 480 of the Code states:

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

8 (1) Been convicted of a crime. A conviction within the meaning of this
9 section means a plea or verdict of guilty or a conviction following a plea of nolo
10 contendere. Any action that a board is permitted to take following the establishment
11 of a conviction may be taken when the time for appeal has elapsed, or the judgment
12 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, 1203.4a, or 1203.41 of the Penal Code.

12

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

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

16 (b) Notwithstanding any other provision of this code, a person shall not be
17 denied a license solely on the basis that he or she has been convicted of a felony if
18 he or she has obtained a certificate of rehabilitation under Chapter 3.5
(commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he
19 or she has been convicted of a misdemeanor if he or she has met all applicable
20 requirements of the criteria of rehabilitation developed by the board to evaluate the
rehabilitation of a person when considering the denial of a license under
subdivision (a) of Section 482.

21 (c) Notwithstanding any other provisions of this code, a person shall not be
22 denied a license solely on the basis of a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
23 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41
of the Penal Code shall provide proof of the dismissal.

23

24 5. Section 4301 of the Code states:

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

28

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

7

8 (k) The conviction of more than one misdemeanor or any felony involving the
9 use, consumption, or self-administration of any dangerous drug or alcoholic
10 beverage, or any combination of those substances.

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

....

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not
being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crimes)

7. Respondent's application is subject to denial under Code sections 480, subdivision
(a)(1), and 4301, subdivisions (k) and (l), in that Respondent was convicted of two alcohol-

1 related misdemeanors substantially related to the qualifications, functions, and duties of a
2 pharmacy technician. The circumstances are as follows:

3 a. On or about August 23, 2010, in a criminal proceeding entitled *People v. Abel*
4 *Woldegabriel* in Alameda County Superior Court, Case Number 427730, Respondent was
5 convicted by plea of nolo contendere in Vehicle Code 23152, subdivision (b) [driving with a
6 blood alcohol content in excess of 0.08%], a misdemeanor. Respondent was sentenced to 36
7 months probation, complete a 6 month alcohol program, and serve 5 days in jail. The
8 circumstances of his arrest were that on or about June 4, 2010, Respondent was involved in a
9 vehicle collision. Officers from the San Leandro Police Department arrived and observed
10 Respondent to be under the influence of alcohol. Respondent's blood alcohol content at the time
11 of his arrest was 0.19%.

12 b. On or about April 18, 2012, in a criminal proceeding entitled *People v. Abel*
13 *Woldegabriel* in Alameda County Superior Court, Case Number 577758, Respondent was
14 convicted by plea of nolo contendere in Vehicle Code 23152, subdivision (b) [driving with a
15 blood alcohol content in excess of 0.08%], a misdemeanor. Respondent was sentenced to 36
16 months probation, complete an 18 month alcohol program, and serve 20 days in jail. The
17 circumstances of his arrest were that on or about March 3, 2012, Respondent was driving a motor
18 vehicle in Oakland, CA. Officers from the California Highway Patrol observed Respondent to
19 weave in and out of lanes while driving. The officers initiated a traffic stop of Respondent. The
20 officers observed Respondent to be under the influence of alcohol. Respondent's blood alcohol
21 content at the time of his arrest was 0.21%.

22 SECOND CAUSE FOR DENIAL OF APPLICATION

23 (Dangerous Use of Alcohol)

24 8. Respondent's application is subject to denial under Code sections 480, subdivision
25 (a)(3) and 4301, subdivision (h), in that the Respondent used alcohol in a manner that was
26 dangerous to the public. The circumstances are described above in paragraph 7.

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28 ///

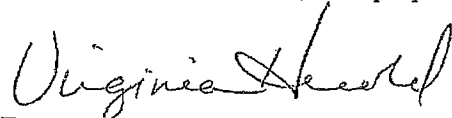
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PRAAYER

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 Abel Woldegabriel for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/8/16



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

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