

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

In the Matter of the Statement of Issues
Against:

KARINA DENISE CASTILLO

Respondent.

Case No. 5823

OAH No. 2016081209


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 at 5:00 p.m. on March 1, 2017.

It is so ORDERED on January 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on December 7, 2016, in Oakland, California.

Deputy Attorney General Timothy McDonough represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy.

Respondent Karina Denise Castillo, was unrepresented and present throughout the administrative hearing.

The matter was submitted for decision on December 7, 2016.

FACTUAL FINDINGS

1. Complainant Virginia K. Herold made the statement of issues in her official capacity as Executive Officer of the Board of Pharmacy (Board).
2. On October 16, 2015, the Board received an application for a Pharmacy Technician Registration from Karina Denise Castillo (respondent). On October 13, 2015, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 11, 2016.

Cause for Denial

3. On October 27, 2011, respondent attempted to sell a Sony PlayStation III game console and three PlayStation III game cartridges to a store in Napa. The store bought

two of the three games but refused to buy the console because it did not have any controllers or the proper wiring. The console and game cartridges had been stolen earlier that day from the garage of a house in Napa, California, by a male friend. On October 29, 2011, officers from the Napa Police Department served a search warrant at the residence of respondent's male friend, and located the stolen game console. Respondent was present at the male friend's residence when the search warrant was executed. Respondent told officers that she had gone to the store in Napa to sell the game console and games, but claimed that she did not know they were stolen. Respondent admitted that when she went into the store with the game console and games she was wearing sunglasses and a hat. Officers arrested respondent for burglary and receiving stolen property.

4. On January 18, 2012, in Napa County Superior Court, respondent pled no contest to receiving stolen property, Penal Code section 496, subdivision (a), a misdemeanor. Imposition of sentence was suspended and respondent was placed on two years' probation, including conditions that she serve four days in county jail, with credit for four days, and pay a \$100 fine. She has completed all the terms and conditions of her probation except she still owes fees, which she is paying off at about \$40 per month. She will be seeking a Penal Code section 1203.4 dismissal.

Respondent's Evidence

5. Respondent has been employed as a pharmacy clerk at Pharma Integrative Pharmacy for over a year. She is well-liked at the pharmacy. She presented a letter from Bernice Wright, Pharm.D., who is a pharmacist where respondent works. She finds respondent to be a quick learner and compassionate. Respondent also presented the testimony of, and a letter from, Rachel Mullins, Pharmacy Technician. Ms. Mullins finds respondent to be a dedicated employee and co-worker. Respondent was honest about her past problems and criminal conviction. They are willing to supervise respondent if she receives her registration on probation.

6. Respondent also presented a letter from Mark T. James, R.Ph., who is the pharmacy manager. He also stated that respondent is very mature and an asset to the pharmacy. Respondent has access to the cash register and inventory as part of her job as a pharmacy clerk.

7. Respondent has had problems with drug addiction in the past. Her drug of choice was methamphetamine. She completed the Matrix program, as an outpatient, for eight months. Her sobriety date is July 15, 2012. She changed her life and is dedicated to being a role model for her daughter, who is almost two years old. She understands how important honesty and integrity are.

8. Respondent completed community service with the Salvation Army and continued to volunteer after she completed the court ordered hours. She stayed on as an employee for about a year as a prep cook helping to feed the homeless.

9. Respondent has demonstrated sufficient rehabilitation to warrant a probationary registration.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(2), authorizes the Board to deny a license or registration to an applicant who has done an act involving dishonesty, fraud or deceit. Cause to deny respondent's application exists pursuant to Business and Professions Code section 480, subdivision (a)(2). (Factual Findings 3 and 4.)

2. Business and Professions Code section 480, subdivision (a)(1), authorizes the Board to deny a license or registration to any applicant who is was convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. Respondent's conviction for receiving stolen property is substantially related to the qualifications, functions and duties of a pharmacy technician. Cause to deny respondent's application exists pursuant to Business and Professions Code section 480, subdivision (a)(1). (Factual Findings 3 and 4.)

3. Business and Professions Code section 480, subdivision (a)(3), by reference to Business and Professions Code section 4301, subdivision (l), authorizes the Board to deny a license or registration to any applicant who committed an act that if done by a registered pharmacy technician would be grounds for suspension or revocation of the registration. Cause to deny respondent's application exists pursuant to Business and Professions Code section 480, subdivision (a)(3), by reference to Business and Professions Code section 4301, subdivision (l). (Factual Findings 3 and 4.)

4. Respondent has not been involved in criminal conduct in almost five years. To her credit, she turned her life around despite difficulties. In addition, she has volunteered with the Salvation Army. By all accounts, respondent has developed into reliable, honest, hardworking and giving individual. In light of a pharmacy technician's access to medication, a two-year probationary registration in reasonable. However, in the absence of any evidence of drug or alcohol abuse or dependence, or criminal conduct in almost five years, drug testing is not warranted. Respondent's current employment requires her to handle payments and inventory; there is no basis to suspend her from those duties pending certification as a pharmacy technician.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a registration, a registration shall be issued to respondent Karina Denise Castillo and immediately revoked; the order of revocation is stayed and respondent is placed on probation for two 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 she is certified as defined by Business and Professions Code section 4202, subdivision (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 work as a pharmacy technician until notified by the Board.

During suspension, respondent may continue in her current employment. Other than performing her duties in that position, she 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. Other than her current job duties, 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. Other than her current job duties respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not work as a pharmacy technician 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 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 72 hours of such occurrence:

- 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

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's registration 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 her 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 2016081209 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause 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 2016081209 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 2016081209 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 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause 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 2016081209 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 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 registration 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 Registration

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

If respondent's pharmacy technician registration 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 registration shall be subject to all terms and conditions of this probation not previously satisfied.

9. Registration 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 her pharmacy technician registration 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 registration, 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 registration history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician registration to the Board within 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 years from the effective date of the surrender. Respondent shall meet all requirements applicable to the registration sought as of the date the application for that registration 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 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 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.

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 minimum of hours per calendar month as directed by the board. 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 for a minimum of hours per calendar month as designated by the Board in California, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 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 36 months.

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

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 registration. 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 registration will be fully restored.

DATED: January 4, 2017

DocuSigned by:
Ruth S. Astle
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RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2134
Facsimile: (510) 622-2270
7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

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. 5823

13 **KARINA DENISE CASTILLO**

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 October 16, 2015, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Karina Denise
24 Castillo (Respondent). On or about October 13, 2015, Karina Denise Castillo certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on March 11, 2016.

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1 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
2 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
3 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
4 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
5 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
6 Section 482.

7 "(e) Notwithstanding any other provisions of this code, a person shall not be denied a
8 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
9 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
10 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
11 of the dismissal.

12 "(d) A board may deny a license regulated by this code on the ground that the applicant
13 knowingly made a false statement of fact that is required to be revealed in the application for the
14 license."

15 6. Section 4301 of the Code states, in relevant part:

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

19 "(a) Gross immorality.

20 ...

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

24 ...

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
5 dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment."

14 7. California Code of Regulations, title 16, section 1770, states:

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

21 8. California Code of Regulations, title 16, section 1769, states:

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

25 "(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for
26 denial.

27 "(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
28 consideration as grounds for denial under Section 480 of the Business and Professions Code.

1 console and games she was wearing sunglasses and a hat, but claimed that she always wears
2 sunglasses and a hat. Officers arrested Respondent for burglary and receiving stolen property.

3 10. On or about January 18, 2012, in a criminal matter entitled *The People of the State of*
4 *California v. Karina Denise Castillo*, in the Napa County Superior Court, Case No. CR150305,
5 Respondent, based on a plea of no contest, was convicted of receiving stolen property (Pen.
6 Code, § 496, subd. (a)), a misdemeanor. The court sentenced Respondent to serve 4 days in jail,¹
7 and placed her on probation for two years with various conditions, and ordered her to pay a fine of
8 \$100.00.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**
10 **(Conviction of Substantially Related Crime)**
11 **(Bus. & Prof. Code §§ 480, subd. (a)(1))**

12 11. Respondent's application for a Pharmacy Technician Registration is subject to denial
13 under Code sections 480, subdivision (a)(1), in that, on or about January 18, 2012, Respondent
14 was convicted of a crime substantially related to the qualifications, functions, and duties of a
15 registered pharmacy technician. The circumstances are explained in paragraphs 9 and 10, above.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**
17 **(Dishonest Act)**
18 **(Bus. & Prof. Code §§ 480, subd. (a)(2))**

19 12. Respondent's application for a Pharmacy Technician Registration is subject to denial
20 under Code section 480, subdivision (a)(2), in that, on or about October 27, 2011, Respondent
21 committed an act involving dishonesty. The circumstances are explained in paragraphs 9 and 10,
22 above.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**
24 **(Committed Act Which Could Be Basis For Discipline Against Licensee)**
25 **(Bus. & Prof. Code §§ 480, subd. (a)(3), 4301, subd. (1))**

26 13. Respondent's application for a Pharmacy Technician Registration is subject to denial
27 under Code section 480, subdivision (a)(3), by reference to Code section 4301, subdivision (1), in
28 that Respondent committed an act that if done by a registered pharmacy technician would be
grounds for suspension or revocation of the registration (Bus. & Prof. Code, § 480, subd. (a)(3)).

¹ At the time of the sentencing, Respondent was given credit for four days of jail time already served.

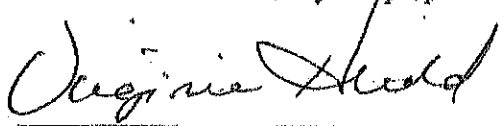
1 Specifically, Respondent was convicted of a crime substantially related to the qualifications,
2 functions, and duties of a registered pharmacy technician (Bus. & Prof. Code, § 4301, subd. (1)).
3 The circumstances are explained in paragraphs 9 and 10, above.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
6 Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:

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

10
11 DATED: 8/11/16



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

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